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NORTH CAROLINA REGISTER

**VOLUME 10 • ISSUE 14 • Pages 1229 - 1427
October 16, 1995**

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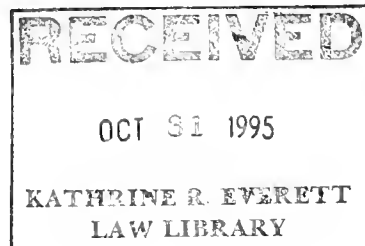
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PUBLISHED BY

***The Office of Administrative Hearings
Rules Division
PO Drawer 27447
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Telephone (919) 733-2678
Fax (919) 733-3462***



NORTH CAROLINA REGISTER

The *North Carolina Register* is published twice a month and contains information relating to agency, executive, legislative and judicial actions required by or affecting Chapter 150B of the General Statutes. All proposed administrative rules and notices of public hearings filed under G.S. 150B-21.2 must be published in the *Register*. The *Register* will typically comprise approximately fifty pages per issue of legal text.

State law requires that a copy of each issue be provided free of charge to each county in the state and to various state officials and institutions.

The *North Carolina Register* is available by yearly subscription at a cost of one hundred and twenty dollars (\$120.00) for 24 issues. Individual issues may be purchased for ten dollars (\$10.00).

Requests for subscription to the *North Carolina Register* should be directed to the Office of Administrative Hearings, PO Drawer 27447, Raleigh, NC 27611-7447.

ADOPTION, AMENDMENT, AND REPEAL OF RULES

The following is a generalized statement of the procedures to be followed for an agency to adopt, amend, or repeal a rule. For the specific statutory authority, please consult Article 2A of Chapter 150B of the General Statutes.

Any agency intending to adopt, amend, or repeal a rule must first publish notice of the proposed action in the *North Carolina Register*. The notice must include the time and place of the public hearing (or instructions on how a member of the public may request a hearing); a statement of procedure for public comments; the text of the proposed rule or the statement of subject matter; the reason for the proposed action; a reference to the statutory authority for the action and the proposed effective date.

Unless a specific statute provides otherwise, at least 15 days must elapse following publication of the notice in the *North Carolina Register* before the agency may conduct the public hearing and at least 30 days must elapse before the agency can take action on the proposed rule. An agency may not adopt a rule that differs substantially from the proposed form published as part of the public notice, until the adopted version has been published in the *North Carolina Register* for an additional 30 day comment period.

When final action is taken, the promulgating agency must file the rule with the Rules Review Commission (RRC). After approval by RRC, the adopted rule is filed with the Office of Administrative Hearings (OAH).

A rule or amended rule generally becomes effective 5 business days after the rule is filed with the Office of Administrative Hearings for publication in the North Carolina Administrative Code (NCAC).

Proposed action on rules may be withdrawn by the promulgating

agency at any time before final action is taken by the agency or before filing with OAH for publication in the NCAC.

TEMPORARY RULES

Under certain emergency conditions, agencies may issue temporary rules. Within 24 hours of submission to OAH, the Codifier of Rules must review the agency's written statement of findings of need for the temporary rule pursuant to the provisions in G.S. 150B-21.1. If the Codifier determines that the findings meet the criteria in G.S. 150B-21.1, the rule is entered into the NCAC. If the Codifier determines that the findings do not meet the criteria, the rule is returned to the agency. The agency may supplement its findings and resubmit the temporary rule for an additional review or the agency may respond that it will remain with its initial position. The Codifier, thereafter, will enter the rule into the NCAC. A temporary rule becomes effective either when the Codifier of Rules enters the rule in the Code or on the sixth business day after the agency resubmits the rule without change. The temporary rule is in effect for the period specified in the rule or 180 days, whichever is less. An agency adopting a temporary rule must begin rule-making procedures on the permanent rule at the same time the temporary rule is filed with the Codifier.

NORTH CAROLINA ADMINISTRATIVE CODE

The North Carolina Administrative Code (NCAC) is a compilation and index of the administrative rules of 25 state agencies and 40 occupational licensing boards. Compilation and publication of the NCAC is mandated by G.S. 150B-21.18.

The Code is divided into Titles and Chapters. Each state agency is assigned a separate title which is further broken down by chapters. Title 21 is designated for occupational licensing boards. The NCAC is available in two formats.

- (1) Single pages may be obtained at a minimum cost of two dollars and 50 cents (\$2.50) for 10 pages or less, plus fifteen cents (\$0.15) per each additional page. Requests for pages of rules or volumes of the NCAC should be directed to the Office of Administrative Hearings.
- (2) The full publication and supplement service is printed and distributed by Barclays Law Publishers. It is available in hardcopy, CD-ROM and diskette format. For subscription information, call 1-800-888-3600.

CITATION TO THE NORTH CAROLINA REGISTER

The *North Carolina Register* is cited by volume, issue, page number and date. 10:01 NCR 1-67, April 3, 1995 refers to Volume 10, Issue 1, pages 1 through 67 of the *North Carolina Register* issued on April 3, 1995.

NORTH CAROLINA REGISTER

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Pages 1229 - 1427**

October 16, 1995

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through October 2, 1995.

Office of Administrative Hearings
Rules Division
424 North Blount Street (27601)
PO Drawer 27447
Raleigh, NC 27611-7447
(919) 733-2678
FAX (919) 733-3462

Julian Mann III, Director
James R. Scarcella Sr., Deputy Director
Molly Masich, Director of APA Services
Ruby Creech, Publications Coordinator
Teresa Kilpatrick, Editorial Assistant
Jean Shirley, Editorial Assistant

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10:7	07/03/95	06/12/95	06/19/95	07/18/95	08/02/95	08/21/95	10/01/95
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This table is published as a public service, and the computation of time periods are not to be deemed binding or controlling. Time is computed according to 26 NCAC 2B .0103 and the Rules of Civil Procedure, Rule 6.

* An agency must accept comments for at least 30 days after the proposed text is published or until the date of any public hearing, whichever is longer. See G.S. 150B-21.2(f) for adoption procedures.

** The "Earliest Effective Date" is computed assuming that the agency follows the publication schedule below, that the Rules Review Commission approves the rule at the next calendar month meeting after submission, and that RRC delivers the rule to the Codifier of Rules five (5) business days before the 1st day of the next calendar month.

This Section contains public notices that are required to be published in the Register or have been approved by the Codifier of Rules for publication.

**TITLE 15A
DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES**

The Commission for Health Services has changed the location of the hearing to be held on October 19, 1995 from the Ground Floor Hearing Room of the Archdale Building in Raleigh to:

**Parker - Lincoln Building
Room 1B-208
2728 Capital Blvd.
Raleigh, NC**

These notices were published in the *North Carolina Register* on October 2, 1995 and can be found on pages 1160-1182 (10:13 NCR 1160-1182) and contained the following rules: 15A NCAC 13A .0006, .0019; 18A .1801 - .1814, .1818, .2601 - .1602, .2618, .2624, .2632, .2635 - .2636; 20D .0233 - .0234, .0236, .0241 - .0243, .0247 - .0252; 21F .0801 - .0802, .0804, .1101 - .1103, .1105; 24A .0102, .0202 - .0204 and .0301.

BEFORE THE JOINT COMMITTEE OF
THE BOARD OF PODIATRY EXAMINERS
AND
THE NORTH CAROLINA MEDICAL BOARD

Whereas, on June 14, 1995, Senate Bill 399 was ratified as Chapter 248 of the 1995 Session Laws of the State of North Carolina enacted by the General Assembly; and

Whereas, pursuant to Section 2 of Chapter 248 of the 1995 Session Laws enacted by the North Carolina General Assembly, the North Carolina Medical Board¹ selected two of its members, Ernest B. Spangler, MD and Hector H. Henry II, MD, and the North Carolina Board of Podiatry Examiners selected two of its members, Carl Purvis, DPM and James Mothershed, DPM, to serve on a committee (hereinafter "the Committee") to jointly define by rule what constitutes "simple soft tissue procedures" as that phrase is used in G.S. 90-202.2(b) in order to protect the public health safety and welfare; and

Whereas, rules adopted by the Committee under Section 2 of Chapter 248 of the 1995 Session Laws enacted by the General Assembly are exempt from Article 2A of Chapter 150B of the General Statutes, and

Whereas, the Committee met on July 25, 1995, September 5, 1995 and September 25, 1995.

Whereas, by action on September 25, 1995, the Committee jointly defined what constitutes "simple soft tissue procedures" as that phrase is used in G.S. 90-202.2(b) as follows:

SIMPLE SOFT TISSUE PROCEDURES PURSUANT TO G.S. 90-202.2(b) ARE PROCEDURES INVOLVING STRUCTURES PROXIMAL TO A LINE PARALLEL WITH THE DOME OF THE TALUS THAT MAY BE PERFORMED BY A PODIATRIST IN AN OFFICE SETTING INCLUDE:

- (1) LIGATION OF SUPERFICIAL VEINS OR VESSELS;
- (2) REPAIR OF SOFT TISSUE LACERATIONS AND ABRASIONS;
- (3) INCISION, DRAINAGE AND DEBRIDEMENT OF ABSCESES, HEMATOMAS, AND ULCERATIONS;
- (4) EXCISION OF FOREIGN BODIES AND SOFT TISSUE MASSES WHICH ARE NOT KNOWN OR THOUGHT TO BE MALIGNANT;
- (5) BIOPSY AND CAUTERIZATION OF SOFT TISSUE LESIONS;
- (6) LIGAMENTOUS AND TENDON REPAIRS FOUND DURING THE AFOREMENTIONED PROCEDURES;
- (7) RELEASE OF NERVE ENTRAPMENT FOUND IN CONJUNCTION WITH AN EXTENSION OF NERVE ENTRAPMENT PROCEDURES OF THE FOOT.

Now therefore, it is hereby ORDERED that the following rule inscribed in the North Carolina Administrative Code as Rule 21 NCAC 52 .1401 by the Codifier of Rules:

SECTION .1400 - SCOPE OF PRACTICE

.1401 SOFT TISSUE PROCEDURES

SIMPLE SOFT TISSUE PROCEDURES PURSUANT TO G.S. 90-202.2(b) ARE PROCEDURES INVOLVING STRUCTURES PROXIMAL TO A LINE PARALLEL WITH THE DOME OF THE TALUS THAT MAY BE

¹ Pursuant to Chapter 94 of the 1995 Session Laws enacted by the General Assembly, the name of the North Carolina Board of Medical Examiners was change to North Carolina Medical Board.

PERFORMED BY A PODIATRIST IN AN OFFICE SETTING INCLUDE:

- (1) LIGATION OF SUPERFICIAL VEINS OR VESSELS;
- (2) REPAIR OF SOFT TISSUE LACERATIONS AND ABRASIONS;
- (3) INCISION, DRAINAGE AND DEBRIDEMENT OF ABSCESES, HEMATOMAS, AND ULCERATIONS;
- (4) EXCISION OF FOREIGN BODIES AND SOFT TISSUE MASSES WHICH ARE NOT KNOWN OR THOUGHT TO BE MALIGNANT;
- (5) BIOPSY AND CAUTERIZATION OF SOFT TISSUE LESIONS;
- (6) LIGAMENTOUS AND TENDON REPAIRS FOUND DURING THE AFOREMENTIONED PROCEDURES;
- (7) RELEASE OF NERVE ENTRAPMENT FOUND IN CONJUNCTION WITH AN EXTENSION OF NERVE ENTRAPMENT PROCEDURES OF THE FOOT.

It is further ORDERED that a copy of this order be published in the North Carolina Register.

This rule shall be effective October 1, 1995.

SO ORDERED, this the 29th day of September, 1995.

JOINT COMMITTEE OF THE
NORTH CAROLINA BOARD OF PODIATRY EXAMINERS
AND THE NORTH CAROLINA MEDICAL BOARD

BY:

E. B. Spangler, MD
Hector H. Henry, II, MD
James Mothershed, DPM
Carl Purvis, DPM

**TITLE 10 - DEPARTMENT OF HUMAN
RESOURCES**

Statutory Authority G.S. 131E-79.

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Medical Care Commission intends to adopt rules cited as 10 NCAC 3C .5301 and .5401 - .5414.

Proposed Effective Date: March 1, 1996.

A Public Hearing will be conducted at 9:30 a.m. on December 1, 1995 at the Council Building, 701 Barbour Drive, Room 201, Raleigh, NC.

Reason for Proposed Action: To adopt new hospital rules governing hospitals with long term care beds and comprehensive inpatient rehabilitation beds which conform to those previously adopted for free-standing nursing facilities.

Comment Procedures: Any interested person may present comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone number (919) 733-2342. In order to allow the Commission sufficient time to review and evaluate your written comments prior to the hearing, please submit your written comments to Mr. Jackie Sheppard at the above address, no later than close of business on November 15, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3C - LICENSING OF HOSPITALS

**SECTION .5300 - NURSING AND ADULT CARE
HOME BEDS**

**.5301 THE LICENSURE OF NURSING AND ADULT
CARE HOME BEDS IN A HOSPITAL**

When a facility has nursing facility beds or adult care home beds, the beds shall be provided under the hospital's license as provided in Rule .3101 of this Subchapter. The nursing facility beds and the adult care home beds shall be subject to the rules in 10 NCAC Subchapter 3H, with the exception that the following rules shall not apply: 10 NCAC 3H .2001(5); .2101 - .2108; .2201; .2208; .2209; .2211; .2212; .2302; .2401; .2402; .2503; .2504; .2602; .2607; .2701; and .2901. With these exceptions, the rules in 10 NCAC 3H are incorporated by reference with all subsequent amendments. Referenced rules are available from the N.C. Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina 27626-0530 at a cost of six dollars (\$6.00) per copy.

**SECTION .5400 - COMPREHENSIVE INPATIENT
REHABILITATION**

.5401 DEFINITIONS

The following definitions shall apply to inpatient rehabilitation facilities or units only:

- (1) "Case management" means the coordination of services, for a given patient, between disciplines so that the patient may reach optimal rehabilitation through the judicious use of resources.
- (2) "Comprehensive, inpatient rehabilitation program" means a program for the treatment of persons with functional limitations or chronic disabling conditions who have the potential to achieve a significant improvement in activities of daily living. A comprehensive, rehabilitation program utilize a coordinated and integrated, interdisciplinary approach, directed by a physician, to assess patient needs and to provide treatment and evaluation of physical, psycho-social and cognitive deficits.
- (3) "Inpatient rehabilitation facility or unit" means a free-standing facility or a unit (unit pertains to contiguous dedicated beds and spaces) within an existing licensed health service facility approved in accordance with G.S. 131E, Article 9 to establish inpatient, rehabilitation beds and to provide a comprehensive, inpatient rehabilitation program.
- (4) "Medical consultations" means consultations which the rehabilitation physician or the attending physician determine are necessary to meet the acute medical needs of the patient and do not include routine medical needs.
- (5) "Occupational therapist" means any individual licensed in the State of North Carolina as an occupational therapist in accordance with the provisions of G.S. 90, Article 18D.
- (6) "Occupational therapist assistant" means any individual licensed in the State of North Carolina as an occupational therapist assistant in accordance with the provisions of G.S. 90, Article 18D.
- (7) "Psychologist" means a person licensed as a practicing psychologist in accordance with G.S. 90, Article 18A.
- (8) "Physiatrist" means a licensed physician who has completed a physical medicine and rehabilitation residency training program approved by the Accrediting Council of Graduate Medical Education or the American Osteopathic Association.
- (9) "Physical therapist" means any person licensed in the State of North Carolina as a physical therapist in accordance with the provisions of G.S. 90, Article 18B.
- (10) "Physical therapist assistant" means any person licensed in the State of North Carolina as a physi-

- cal therapist assistant in accordance with the provisions of G.S. 90-270.24, Article 18B.
- (11) "Recreational therapist" means a person certified by the State of North Carolina Therapeutic Recreational Certification Board.
- (12) "Rehabilitation nurse" means a registered nurse licensed in North Carolina, with training, either academic or on-the-job, in physical rehabilitation nursing and at least one year experience in physical rehabilitation nursing.
- (13) "Rehabilitation aide" means an unlicensed assistant who works under the supervision of a registered nurse, licensed physical therapist or occupational therapist in accordance with the appropriate occupational licensure laws governing his or her supervisor and consistent with staffing requirements as set forth in Rule .5508 of this Section. The rehabilitation aide shall be listed on the North Carolina Nurse Aide Registry and have received additional staff training as listed in Rule .5509 of this Section.
- (14) "Rehabilitation physician" means a physiatrist or a physician who is qualified, based on education, training and experience regardless of specialty, of providing medical care to rehabilitation patients.
- (15) "Social worker" means a person certified by the North Carolina Certification Board for Social Work in accordance with G.S. 90B-3.
- (16) "Speech and language pathologist" means any person licensed in the State of North Carolina as a speech and language pathologist in accordance with the provisions of G.S. 90, Article 22.

Statutory Authority G.S. 131E-79.

.5402 PHYSICIAN REQUIREMENTS FOR INPATIENT REHABILITATION FACILITIES OR UNITS

- (a) In a rehabilitation facility or unit, a physician shall participate in the provision and management of rehabilitation services and in the provision of medical services.
- (b) In a rehabilitation facility or unit, a rehabilitation physician shall be responsible for a patient's interdisciplinary treatment plan. Each patient's interdisciplinary treatment plan shall be developed and implemented under the supervision of a rehabilitation physician.
- (c) The rehabilitation physician shall participate in the preliminary assessment within 48 hours of admission, prepare a plan of care and direct the necessary frequency of contact based on the medical and rehabilitation needs of the patient. The frequency shall be appropriate to justify the need for comprehensive inpatient rehabilitation care.
- (d) An inpatient rehabilitation facility or unit's contract or agreements with a rehabilitation physician shall require that the rehabilitation physician shall participate in individual case conferences or care planning sessions and shall review and sign discharge summaries and records. When patients

are to be discharged to another health care facility, the discharging facility shall ensure that the patient has been provided with a discharge plan which incorporates post discharge continuity of care and services. When patients are to be discharged to a residential setting, the facility shall ensure that the patient has been provided with a discharge plan that incorporates the utilization of community resources when available and when included in the patient's plan of care.

(e) The intensity of physician medical services and the frequency of regular contacts for medical care for the patient shall be determined by the patient's pathophysiologic needs.

(f) Where the attending physician of a patient in an inpatient rehabilitation facility or unit orders medical consultations for the patient, such consultations should be provided by qualified physicians within 48 hours of the physician's order. In order to achieve this result, the contracts or agreements between inpatient rehabilitation facilities or units and medical consultants shall require that such consultants render the requested medical consultation within 48 hours.

(g) An inpatient rehabilitation facility or unit shall have a written procedure for setting the qualifications of the physicians, rendering physical rehabilitation services in the facility or unit.

Statutory Authority G.S. 131E-79.

.5403 ADMISSION CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

- (a) The facility shall have written criteria for admission to the inpatient rehabilitation facility or unit. A description of programs or services for screening the suitability of a given patient for placement shall be available to staff and referral sources.
- (b) For patients found unsuitable for admission to the inpatient rehabilitation facility or unit, there shall be documentation of the reasons.
- (c) Within 48 hours of admission, a preliminary assessment shall be completed by members of the interdisciplinary team to insure the appropriateness of placement and to identify the immediate needs of the patients.
- (d) Patients admitted to an inpatient rehabilitation facility or unit must be able to tolerate a minimum of three hours of rehabilitation therapy, five days a week, including at least two of the following rehabilitation services: physical therapy, occupational therapy or speech therapy.
- (e) Patients admitted to an inpatient rehabilitation facility or unit must be medically stable, have a prognosis indicating a progressively improved medical condition and have the potential for increased independence.

Statutory Authority G.S. 131E-79.

.5404 COMPREHENSIVE INPATIENT REHABILITATION EVALUATION

(a) A comprehensive, inpatient rehabilitation evaluation is required for each patient admitted to an inpatient rehabilitation facility or unit. At a minimum this evaluation shall include the reason for referral, a summary of the patient's clinical condition, functional strengths and limitations, and indications for specific services. This evaluation shall be completed within three days.

(b) Each patient shall be evaluated by the interdisciplinary team to determine the need for any of the following services: medical, dietary, occupational therapy, physical therapy, prosthetics and orthotics, psychological assessment and therapy, therapeutic recreation, rehabilitation medicine, rehabilitation nursing, therapeutic counseling or social work, vocational rehabilitation evaluation and speech-language pathology.

Statutory Authority G.S. 131E-79.

.5405 COMPREHENSIVE INPATIENT REHABILITATION INTER-DISCIPLINARY TREAT/PLAN

(a) The interdisciplinary treatment team shall develop an individual treatment plan for each patient within seven days after admission. The plan shall include evaluation findings and information about the following:

- (1) prior level of function;
- (2) current functional limitations;
- (3) specific service needs;
- (4) treatment, supports and adaptations to be provided;
- (5) specified treatment goals;
- (6) disciplines responsible for implementation of separate parts of the plan; and
- (7) anticipated time frames for the accomplishment of specified long-term and short-term goals.

(b) The treatment plan shall be reviewed by the interdisciplinary team at least every other week. All members of the interdisciplinary team, or a representative of their discipline, shall attend each meeting. Documentation of each review shall include progress toward defined goals and identification of any changes in the treatment plan.

(c) The treatment plan shall include provisions for all of the services identified as needed for the patient in the comprehensive inpatient rehabilitation evaluation completed in accordance with Rule .5404 of this Subchapter.

(d) Each patient shall have a designated case manager who is responsible for the coordination of the patient's individualized treatment plan. The case manager is responsible for promoting the program's responsiveness to the needs of the patient and shall participate in all team conferences concerning the patient's progress toward the accomplishment of specified goals. Any of the professional staff involved in the patient's care may be the designated case manager for one or more cases, or the director of nursing or social worker may accept the coordination responsibility for the patients.

Statutory Authority G.S. 131E-79.

.5406 DISCHARGE CRITERIA FOR INPATIENT REHABILITATION FACILITIES OR UNITS

(a) Discharge planning shall be an integral part of the patient's treatment plan and shall begin upon admission to the facility. After established goals have been reached, or a determination has been made that care in a less intensive setting would be appropriate, or that further progress is unlikely, the patient shall be discharged to an appropriate setting. Other reasons for discharge may include an inability or unwillingness of patient or family to cooperate with the planned therapeutic program or medical complications that preclude a further intensive rehabilitative effort. The facility shall involve the patient, family, staff members and referral sources in discharge planning.

(b) The case manager shall facilitate the discharge or transfer process in coordination with the facility social worker.

(c) If a patient is being referred to another facility for further care, appropriate documentation of the patient's current status shall be forwarded with the patient. A formal discharge summary shall be forwarded within 48 hours following discharge and shall include the reasons for referral, the diagnosis, functional limitations, services provided, the results of services, referral action recommendations and activities and procedures used by the patient to maintain and improve functioning.

Statutory Authority G.S. 131E-79.

.5407 COMPREHENSIVE REHABILITATION PERSONNEL ADMINISTRATION

(a) The facility shall have qualified staff members, consultants and contract personnel to provide services to the patients admitted to the inpatient rehabilitation facility or unit.

(b) Personnel shall be employed or provided by contractual agreement in sufficient types and numbers to meet the needs of all patients admitted for comprehensive rehabilitation.

(c) Written agreements shall be maintained by the facility when services are provided by contract on an ongoing basis.

Statutory Authority G.S. 131E-79.

.5408 COMPREHENSIVE INPATIENT REHABILITATION PROGRAM STAFFING REQUIREMENTS

(a) The staff of the inpatient rehabilitation facility or unit shall include at a minimum:

- (1) the inpatient rehabilitation facility or unit shall be supervised by a rehabilitation nurse. The facility shall identify the nursing skills necessary to meet the needs of the rehabilitation patients in the unit and assign staff qualified to meet those needs;

- (2) the minimum nursing hours per patient in the rehabilitation unit shall be 5.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full-time equivalents, one of which must be a registered nurse;
- (3) the inpatient rehabilitation unit shall employ or provide by contractual agreements sufficient therapist to provide a minimum of three hours of specific (physical, occupational or speech) or combined rehabilitation therapy services per patient day;
- (4) physical therapy assistants and occupational therapy assistants shall be supervised on-site by physical therapists or occupational therapists;
- (5) rehabilitation aides shall have documented training appropriate to the activities to be performed and the occupational licensure laws of his or her supervisor. The overall responsibility for the on-going supervision and evaluation of the rehabilitation aide remains with the registered nurse as identified in Subparagraph (a)(1) of this Rule. Supervision by the physical therapist or by the occupational therapist is limited to that time when the therapist is on-site and directing the rehabilitation activities of the aide; and
- (6) hours of service by the rehabilitation aide are counted toward the required nursing hours when the aide is working under the supervision of the nurse. Hours of service by the rehabilitation aide are counted toward therapy hours during that time the aide works under the immediate, on-site supervision of the physical therapist or occupational therapist. Hours of service shall not be dually counted for both services. Hours of service by rehabilitation aides in performing nurse-aide duties in areas of the facility other than the rehabilitation unit shall not be counted toward the 5.5 hour minimum nursing requirement described for the rehabilitation unit.

(b) Additional personnel shall be provided as required to meet the needs of the patient, as defined in the comprehensive inpatient rehabilitation evaluation.

Statutory Authority G.S. 131E-79.

.5409 STAFF TRAINING FOR INPATIENT REHABILITATION FACILITIES OR UNIT

Prior to the provision of care, all rehabilitation personnel, excluding physicians, assigned to the rehabilitation unit shall be provided training or shall provide documentation of training that includes at a minimum the following:

- (1) active and passive range of motion;
- (2) assistance with ambulation;
- (3) transfers;
- (4) maximizing functional independence;
- (5) the psycho-social needs of the rehabilitation patient;

- (6) the increased safety risks of rehabilitation training (including falls and the use of restraints);
- (7) proper body mechanics;
- (8) nutrition, including dysphagia and restorative eating;
- (9) communication with the aphasic and hearing impaired patient;
- (10) behavior modification;
- (11) bowel and bladder training; and
- (12) skin care.

Statutory Authority G.S. 131E-79.

.5410 EQUIPMENT REQUIREMENTS/ COMPREHENSIVE INPATIENT REHABILITATION PROGRAMS

(a) The facility shall provide each discipline with the necessary equipment and treatment methods to achieve the short and long-term goals specified in the comprehensive inpatient rehabilitation interdisciplinary treatment plans for patients admitted to these facilities or units.

(b) Each patient's needs for a standard wheelchair or a specially designed wheelchair or additional devices to allow safe and independent mobility within the facility shall be met.

(c) Special physical therapy and occupational therapy equipment for use in fabricating positioning devices for beds and wheelchairs shall be provided including splints, casts, cushions, wedges and bolsters.

(d) Physical therapy devices shall be provided, including a mat, table, parallel bars, sliding boards, and special adaptive bathroom equipment.

Statutory Authority G.S. 131E-79.

.5411 PHYSICAL FACILITY REQUIREMENTS/ INPATIENT REHABILITATION FACILITIES OR UNIT

(a) The inpatient rehabilitation facility or unit shall be in a designated area and shall be used for the specific purpose of providing a comprehensive inpatient rehabilitation program.

(b) The floor area of a single bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180 degree turn with a wheelchair on at least one-side of the bed.

(c) The floor area of a multi-bed bedroom shall be sufficient for the patient or the staff to easily transfer the patient from the bed to a wheelchair and to maneuver a 180 degree turn with a wheelchair between beds.

(d) Each patient room shall meet the following requirements:

- (1) maximum room capacity of no more than four patients;
- (2) operable windows;
- (3) a nurse call system designed to meet the special needs of rehabilitation patients;

- (4) in single and two-bed rooms with private toilet room, the lavatory may be located in the toilet room;
- (5) a wardrobe or closet for each patient which is wheelchair accessible and arranged to allow the patient to access the contents;
- (6) a chest of drawers or built-in drawer storage with mirror above, which is wheelchair accessible; and
- (7) a bedside table for toilet articles and personal belongings.

(e) Space for emergency equipment such as resuscitation carts shall be provided and shall be under direct control of the nursing staff, in proximity to the nurse's station and out of traffic.

(f) Patients' bathing facilities shall meet the following specifications:

- (1) there shall be at least one shower stall or one bathtub for each 15 beds not individually served. Each tub or shower shall be in an individual room or privacy enclosure which provides space for the private use of the bathing fixture, for drying and dressing and for a wheelchair and an assisting attendant;
- (2) showers in central bathing facilities shall be at least five feet square without curbs and designed to permit use by a wheelchair patient;
- (3) at least one five-foot-by-seven-foot shower shall be provided which can accommodate a stretcher and an assisting attendant.

(g) Patients' toilet rooms and lavatories shall meet the following specifications:

- (1) the size of toilet room shall permit a wheelchair, a staff person and appropriate wheel-to-water closet transfers;
- (2) a lavatory in the room shall permit wheelchair access;
- (3) lavatories serving patients shall:
 - (A) allow wheelchairs to extend under the lavatory; and
 - (B) have water supply spout mounted so that its discharge point is a minimum of five inches above the rim of the fixture; and
- (4) lavatories used by patients and by staff shall be equipped with blade-operated supply valves.

(h) The space provided for physical therapy, occupational therapy and speech therapy by all inpatient rehabilitation facilities or units may be shared but shall, at a minimum, include:

- (1) office space for staff;
- (2) office space for speech therapy evaluation and treatment;
- (3) waiting space;
- (4) training bathroom which includes toilet, lavatory and bathtub;
- (5) gymnasium or exercise area;
- (6) work area such as tables or counters suitable for

wheelchair access;

- (7) treatment areas with available privacy curtains or screens;
- (8) an activities of daily living training kitchen with sink, cooking top (secured when not supervised by staff), refrigerator and counter surface for meal preparation;
- (9) storage for clean linens, supplies and equipment;
- (10) janitor's closet accessible to the therapy area with floor receptor or service sink and storage space for housekeeping supplies and equipment (one closet or space may serve more than one area of the inpatient rehabilitation facility or unit); and
- (11) hand washing facilities.

(i) For social work and psychological services the following shall be provided:

- (1) office space for staff;
- (2) office space for private interviewing and counseling for all family members; and
- (3) work space for testing, evaluation and counseling.

(j) If prosthetics and orthotics services are provided, the following space shall be made available as necessary:

- (1) work space for technician; and
- (2) space for evaluation and fittings (with provisions for privacy).

(k) If vocational therapy services are provided, the following space shall be made available as necessary:

- (1) office space for staff;
- (2) work space for vocational services activities such as prevocational and vocational evaluation;
- (3) training space;
- (4) storage for equipment; and
- (5) counseling and placement space.

(l) Recreational therapy space requirements shall include the following:

- (1) activities space;
- (2) storage for equipment and supplies;
- (3) office space for staff; and
- (4) access to male and female toilets.

(m) The following space shall be provided for patient's dining, recreation and day areas:

- (1) sufficient room for wheelchair movement and wheelchair dining seating;
- (2) if food service is cafeteria type, adequate width for wheelchair maneuvers, queue space within the dining area (and not in a corridor) and a serving counter low enough to view food;
- (3) total space for inpatients, a minimum of 25 square feet per bed;
- (4) for outpatients participating in a day program or partial day program, 20 square feet when dining is a part of the program and 10 square feet when dining is not a part of the program;
- (5) storage for recreational equipment and supplies, tables and chairs; and

- (6) the patient dining, recreation and day area spaces shall be provided with windows that have glazing of an area not less than eight percent of the floor area of the space, and at least one-half of the required window area must be operable.
- (n) A laundry shall be available and accessible for patients.

Statutory Authority G.S. 131E-79.

.5412 ADDITIONAL REQUIREMENTS FOR TRAUMATIC BRAIN INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons with traumatic brain injuries shall meet the requirements in this Rule in addition to those identified in this Section.

- (1) Direct-care nursing personnel staffing ratios established in Rule .5408 of this Section shall not be applied to nursing services for traumatic brain injury patients in the inpatient, rehabilitation facility or unit. The minimum nursing hours per traumatic brain injury patient in the unit shall be 6.5 nursing hours per patient day. At no time shall direct care nursing staff be less than two full-time equivalents, one of which shall be a registered nurse.
- (2) The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements physical, occupational or speech therapists in order to provide a minimum of 4.5 hours of specific or combined rehabilitation therapy services per traumatic brain injury patient day.
- (3) The facility shall provide special facility or special equipment needs for patients with traumatic brain injury, including specially designed wheelchairs, tilt tables and standing tables.
- (4) The medical director of an inpatient traumatic brain injury program shall have two years management in a brain injury program, one of which may be in a clinical fellowship program and board eligibility or certification in the medical specialty of the physician's training.
- (5) The facility shall provide the consulting services of a neuropsychologist.
- (6) The facility shall provide continuing education in the care and treatment of brain injury patients for all staff.
- (7) The size of the brain injury program shall be adequate to support a comprehensive, dedicated ongoing brain injury program.

Statutory Authority G.S. 131E-79.

.5413 ADDITIONAL REQUIREMENTS FOR SPINAL CORD INJURY PATIENTS

Inpatient rehabilitation facilities providing services to persons with spinal cord injuries shall meet the requirements

in this Rule in addition to those identified in this Section.

- (1) Direct-care nursing personnel staffing ratios established in Rule .5408 of this Section shall not be applied to nursing services for spinal cord injury patients in the inpatient rehabilitation facility or unit. The minimum nursing hours per spinal cord injury patient in the unit shall be 6.0 nursing hours per patient day. At no time shall direct care nursing staff be less than two full-time equivalents, one of which shall be a registered nurse.
- (2) The inpatient rehabilitation facility or unit shall employ or provide by contractual agreements physical, occupational or speech therapists in order to provide a minimum of 4.0 hours of specific or combined rehabilitation therapy services per spinal cord injury patient day.
- (3) The facility shall provide special facility or special equipment needs of patients with spinal cord injury, including specially designed wheelchairs, tilt tables and standing tables.
- (4) The medical director of an inpatient spinal cord injury program shall have either two years experience in the medical care of persons with spinal cord injuries or six months minimum in a spinal cord injury fellowship.
- (5) The facility shall provide continuing education in the care and treatment of spinal cord injury patients for all staff.
- (6) The facility shall provide specific staff training and education in the care and treatment of spinal cord injury.
- (7) The size of the spinal cord injury program shall be adequate to support a comprehensive, dedicated ongoing spinal cord injury program.

Statutory Authority G.S. 131E-79.

.5414 DEEMED STATUS FOR INPATIENT REHABILITATION FACILITIES OR UNIT

(a) If an inpatient rehabilitation facility or unit with a comprehensive inpatient rehabilitation program is surveyed and accredited by the Joint Commission for the Accreditation of Health Care Organizations (JCAHO) or the Commission on Accreditation of Rehabilitation Facilities (CARF) and has been approved by the Department in accordance with G.S. 131E, Article 9, the Department deems the facility to be in compliance with Rules .5401 through .5413 of this Section.

(b) Deemed status shall be provided only if the inpatient rehabilitation facility or unit provides copies of survey reports to the Department. The JCAHO report shall show that the facility or unit was surveyed for rehabilitation services. The CARF report shall show that the facility or unit was surveyed for comprehensive rehabilitation services. The facility or unit shall sign an agreement (Memorandum of Understanding) with the Department specifying these

terms.

(c) The inpatient rehabilitation facility or unit shall be subject to inspections or complaint investigations by representatives of the Department at any time. If the facility or unit is found not to be in compliance with the rules listed in Paragraph (a) of this Rule, the facility shall submit a plan of correction and be subject to a follow-up visit to ensure compliance.

(d) If the inpatient rehabilitation facility or unit loses or does not renew its accreditation, the facility or unit shall notify the Division in writing within 30 days.

Statutory Authority G.S. 131E-79.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3D .0808, .1501 - .1503; amend 3D .1301 - .1302 and .1401 - .1403.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 9:30 a.m. on December 1, 1995 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: To adopt rules on how to obtain and renew ambulance provider licenses pursuant to HB 447 and amend certification and recertification requirements for ambulance attendants and Emergency Medical Technicians.

Comment Procedures: Any interested person may present comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone number (919) 733-2342. In order to allow the Certificate of Need Section sufficient time to review and evaluate your written comments prior to the hearing, please submit your written comments to Mr. Jackie Sheppard at the above address, no later than close of business on December 1, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 3D - RULES AND REGULATIONS GOVERNING AMBULANCE SERVICE

SECTION .0800 - DEFINITIONS

.0808 AMBULANCE PROVIDER LICENSE

The term "ambulance provider license" means the legal authorization issued by the Office of Emergency Medical Services for a person, firm, corporation, or association to

operate an ambulance service within a specific geographical service area in accordance with Section .1500 of this Subchapter.

Statutory Authority G.S. 131E-155.1.

SECTION .1300 - CERTIFICATION REQUIREMENTS FOR BASIC LIFE SUPPORT PERSONNEL

.1301 CERTIFICATION REQUIREMENTS: AMBULANCE ATTENDANT

(a) To become certified as an Ambulance Attendant, a person must successfully complete either of the following options:

OPTION I

- (1) Be at least 18 years of age;
- (2) ~~Pass a physical examination performed by a physician documenting the ability to function as an Ambulance Attendant;~~
- (2) (3) Successfully complete, within one year prior to application, an Ambulance Attendant training course approved by the Office of Emergency Medical Services, following guidelines established by the Commission, program meeting the requirements of the "North Carolina Ambulance Attendant Curriculum Outline" dated February 1994 and incorporated herein by reference. When training was completed over one year prior to application, a person must submit evidence of completion of pertinent refresher training continuing education in emergency medicine taken in the past year for approval by the Office of Emergency Medical Services;
- (3) (4) Pass a basic life support practical examination administered by the Office of Emergency Medical Services; and
- (4) (5) Pass either an Ambulance Attendant written examination or an oral examination, at the option of the applicant, administered by the Office of Emergency Medical Services; or

OPTION II

- (1) Be at least 18 years of age;
- (2) ~~Pass a physical examination performed by a physician documenting the ability to function as an Ambulance Attendant;~~
- (2) (3) Successfully complete, within one year prior to application, an Emergency Medical Technician training course approved by the Office of Emergency Medical Services, following guidelines established by the Commission, program meeting the requirements of the "North Carolina Emergency Medical Technician Curriculum Outline" dated February 1994 and incorporated herein by reference. When training was completed over one year prior to application, a person must submit evidence of completion of

pertinent ~~refresher training~~ continuing education in emergency medicine taken in the past year for approval by the Office of Emergency Medical Services;

- (3) (4) Pass a basic life support practical examination administered by the Office of Emergency Medical Services; and
- (4) (5) Complete an Emergency Medical Technician written examination administered by the Office of Emergency Medical Services and achieve a minimum score of 55%.

(b) Persons holding current certification equivalent to an Ambulance Attendant with the National Registry of Emergency Medical Technicians or in another state where the training and certification requirements have been approved for reciprocity legal recognition by the Office of Emergency Medical Services may become certified by:

- (1) Presenting evidence of such certification for verification by the Office of Emergency Medical Services; and
- (2) Be at least 18 years of age, age, and
- (3) ~~Pass a physical examination performed by a physician documenting the ability to function as an Ambulance Attendant.~~

(c) Certification obtained through reciprocity legal recognition shall be valid for a period not to exceed the length of the current certification or a period not to exceed four years whichever is shorter. No certification shall be valid for a period exceeding four years. Persons who live in a state that borders North Carolina and are currently affiliated with an ambulance provider in North Carolina may continue to obtain a North Carolina certification through reciprocity legal recognition if they continue to meet the recertification requirements in the state in which they reside. Persons who live in North Carolina and are currently certified in another state that borders North Carolina may continue to obtain a North Carolina certification through reciprocity legal recognition if they continue to meet the recertification requirements in the state in which they are certified. Persons who were previously certified in North Carolina and are currently certified in another state or with the National Registry of Emergency Medical Technicians, must present evidence of pertinent ~~refresher training~~ continuing education and skill evaluation prior to becoming certified through ~~reciprocity~~ legal recognition.

(d) To become recertified as an Ambulance Attendant a person must successfully complete either of the following options:

OPTION I

- (1) ~~A physical examination performed by a physician documenting the ability to function as an Ambulance Attendant; A continuing education program consisting of a minimum of 48 hours during each two year period of the person's four year certification period taught or coordinated by a Qualified EMT Instructor. The continuing education program must meet the requirements~~

set forth in the "Guidelines for Initial Education, Refresher Education, Continuing Education and Performance Evaluation of Emergency Medical Services Basic Life Support Personnel" dated February 1994 and incorporated herein by reference;

- (2) ~~An Ambulance Attendant refresher training program, approved by the Office of Emergency Medical Services, following guidelines established by the Commission; A basic life support skill evaluation(s) approved by the Office of Emergency Medical Services conducted under the direction of a Qualified EMT Instructor assessing the ability to perform the skills of an Ambulance Attendant; or~~
- (3) ~~A basic life support practical examination administered by the Office of Emergency Medical Services; or~~

OPTION II

- (1) ~~A physical examination performed by a physician documenting the ability to function as an Ambulance Attendant; A continuing education program consisting of a minimum of 96 hours during the person's four year certification period. The continuing education program must meet the requirements set forth in the "Guidelines for Initial Education, Refresher Education, Continuing Education and Performance Evaluation of Emergency Medical Services Basic Life Support Personnel" dated February 1994 and incorporated herein by reference;~~
- (2) ~~A continuing education program taught or coordinated by an approved EMT Instructor, following guidelines established by the Commission; and A basic life support practical examination administered by the Office of Emergency Medical Services; or~~
- (3) ~~A basic life support skill evaluation(s) conducted under the direction of the approved EMT Instructor assessing the ability to perform the skills of an Ambulance Attendant, approved by the Office of Emergency Medical Services, following guidelines established by the Commission.~~

OPTION III

- (1) An approved Ambulance Attendant refresher course consisting of a minimum of 48 hours during the person's last year of certification. This refresher course must meet the "Guidelines for Initial Education, Refresher Education, Continuing Education and Performance Evaluation of Emergency Medical Services Basic Life Support Personnel" dated February 1994 and incorporated herein by reference;
- (2) A basic life support practical examination administered by the Office of Emergency Medical Services; and
- (3) After September 30, 1996, an Ambulance Atten-

dant written examination or an oral examination, at the option of the applicant, administered by the Office of Emergency Medical Services.

Statutory Authority G.S. 131E-159(a); 1984 S.L., c. 1034.

.1302 CERTIFICATION REQUIREMENTS: EMERGENCY MEDICAL TECHNICIAN

(a) To become certified as an Emergency Medical Technician, a person shall meet the following criteria:

- (1) Be at least 18 years of age;
- (2) ~~Pass a physical examination performed by a physician documenting the ability to function as an Emergency Medical Technician;~~
- (2) (3) Successfully complete, within one year prior to application, an Emergency Medical Technician training course approved by the Office of Emergency Medical Services, following guidelines established by the Commission; program meeting the requirements of the "North Carolina Emergency Medical Technician Curriculum Outline" dated February 1994 and incorporated herein by reference. When training was completed over one year prior to application, a person must submit evidence of completion of pertinent ~~refresher training~~ continuing education in emergency medicine taken in the past year for approval by the Office of Emergency Medical Services;
- (3) (4) Pass a basic life support practical examination administered by the Office of Emergency Medical Services; and
- (4) (5) Pass an Emergency Medical Technician written examination administered by the Office of Emergency Medical Services.

(b) Persons holding current certification equivalent to an Emergency Medical Technician with the National Registry of Emergency Medical Technicians or in another state where the training and certification requirements have been approved for reciprocity legal recognition by the Office of Emergency Medical Services may become certified by:

- (1) Presenting evidence of such certification for verification by the Office of Emergency Medical Services; and
- (2) Be at least 18 years of age; ~~age; and~~
- (3) ~~Pass a physical examination performed by a physician documenting the ability to function as an Emergency Medical Technician.~~

(c) Certification obtained through reciprocity legal recognition shall be valid for a period not to exceed the length of the current certification or a period not to exceed four years whichever is shorter. No certification shall be valid for a period exceeding four years. Persons who live in a state that borders North Carolina and are currently affiliated with an ambulance provider in North Carolina may continue to obtain a North Carolina certification through reciprocity legal recognition if they continue to meet the

recertification requirements in the state in which they reside. Persons who live in North Carolina and are currently certified in another state that borders North Carolina may continue to obtain a North Carolina certification through reciprocity legal recognition if they continue to meet the recertification requirements in the state in which they are certified. Persons who were previously certified in North Carolina and are currently certified in another state or with the National Registry of Emergency Medical Technicians, must present evidence of pertinent ~~refresher training~~ continuing education and skill evaluation prior to becoming certified through reciprocity legal recognition.

(d) To become recertified as an Emergency Medical Technician a person must successfully complete either of the following options:

OPTION I

- (1) ~~A physical examination performed by a physician documenting the ability to function as an Emergency Medical Technician;~~ A continuing education program consisting of a minimum of 48 hours during each two year period of the person's four year certification period taught or coordinated by a Qualified EMT Instructor. The continuing education program must meet the requirements set forth in the "Guidelines for Initial Education, Refresher Education, Continuing Education and Performance Evaluation of Emergency Medical Services Basic Life Support Personnel" dated February 1994 and incorporated herein by reference;
- (2) ~~An Emergency Medical Technician refresher training program approved by the Office of Emergency Medical Services, following guidelines established by the Commission;~~ A basic life support skill evaluation(s) approved by the Office of Emergency Medical Services conducted under the direction of a Qualified EMT Instructor assessing the ability to perform the skills of an Emergency Medical Technician; or
- (3) ~~A basic life support practical examination administered by the Office of Emergency Medical Services; or~~

OPTION II

- (1) ~~A physical examination performed by a physician documenting the ability to function as an Emergency Medical Technician;~~ A continuing education program consisting of a minimum of 96 hours during the person's four year certification period. The continuing education program must meet the requirements set forth in the "Guidelines for Initial Education, Refresher Education, Continuing Education and Performance Evaluation of Emergency Medical Services Basic Life Support Personnel" dated February 1994 and incorporated herein by reference;
- (2) ~~A continuing education program taught or coor-~~

~~minated by an approved EMT Instructor, following guidelines established by the Commission; and A basic life support practical examination administered by the Office of Emergency Medical Services; or~~

- (3) ~~A basic life support skill evaluation~~(c) ~~conducted under the direction of the approved EMT Instructor assessing the ability to perform the skills of an Emergency Medical Technician, approved by the Office of Emergency Medical Services, following guidelines established by the Commission.~~

OPTION III

- (1) An approved Emergency Medical Technician refresher course consisting of a minimum of 48 hours during the person's last year of certification. This refresher course must meet the "Guidelines for Initial Education, Refresher Education, Continuing Education and Performance Evaluation of Emergency Medical Services Basic Life Support Personnel" dated February 1994 and incorporated herein by reference;
- (2) A basic life support practical examination administered by the Office of Emergency Medical Services; and
- (3) After September 30, 1996, an Emergency Medical Technician written examination administered by the Office of Emergency Medical Services.

Statutory Authority G.S. 131E-159(b); 1984 S.L., c. 1034.

SECTION .1400 - ADMINISTRATION

.1401 LICENSE, PERMIT OR CERTIFICATION DENIAL, SUSPENSION, AMENDMENT OR REVOCATION

(a) ~~The Office of Emergency Medical Services Department~~ may deny, suspend, or revoke the permit of ~~an ambulance service or of~~ a specific vehicle for any of the following reasons:

- (1) Failure to substantially comply with the requirements of Section .0900 of this Subchapter;
- (2) Obtaining a permit through fraud or misrepresentation; or
- (3) Failure to provide emergency medical care to the defined ambulance service area in a timely and professional manner.

(b) The Department may issue a temporary permit for a specific vehicle whenever the Department finds that:

- (1) the ambulance provider to which that vehicle is assigned has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article; and
- (2) there is a reasonable probability that the ambulance provider can remedy the permit deficiencies within a reasonable length of time; and

- (3) there is a reasonable probability that the ambulance provider will be able thereafter to remain in compliance with the rules regarding ambulance permits for the foreseeable future.

(c) The Department shall give the ambulance provider written notice of the temporary ambulance permit. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the temporary ambulance permit not to exceed 60 days;
- (2) a copy of the ambulance inspection form;
- (3) the statutes or rules alleged to be violated; and
- (4) notice to the ambulance provider's right to a contested case hearing on the temporary ambulance permit.

(d) The temporary ambulance permit shall be effective immediately upon its receipt by the ambulance provider. The temporary ambulance permit shall remain in effect until:

- (1) the Department restores the vehicle to full permitted status; or
- (2) the Department revokes the vehicle's ambulance permit.

(b) (e) ~~The Office of Emergency Medical Services Department~~ may deny, suspend, or revoke the certification of a field technician for any of the following reasons:

- (1) Failure to comply with the applicable performance and certification requirements as found in ~~Section .0800~~ Sections .1200 and .1300 of this Subchapter;
- (2) Obtaining or attempting to obtain certification or recertification through fraud or misrepresentation;
- (3) Aiding a person in obtaining or attempting to obtain certification or recertification through fraud or misrepresentation;
- (4) Failure to competently perform the skills or procedures enumerated in Section ~~.1400~~ .1200 of this Subchapter;
- (5) Performance of a skill or procedure which is not within the scope and responsibility of the certificate holder;
- (6) Performance of a skill or procedure that is detrimental to the health and safety of a patient;
- (7) Any felony conviction;
- (8) A misdemeanor conviction of the use, possession, or distribution of illegal drugs within the past five years; or
- (9) Conviction of driving while impaired within the past five years.

(f) The Department shall deny any application for an Ambulance Provider License upon becoming aware that the applicant is not in substantial compliance with G.S. 131E, Article 7 and the rules adopted under that article.

(g) The Department may amend any Ambulance Provider License by reducing it from a full license to a provisional license whenever the Department finds that:

- (1) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article; and
- (2) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
- (3) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the licensure rules for the foreseeable future.

(h) The Department shall give the licensee written notice of the amendment to the Ambulance Provider License. This notice shall be given personally or by certified mail and shall set forth:

- (1) the length of the provisional Ambulance Provider License;
- (2) the factual allegations;
- (3) the statutes or rules alleged to be violated; and
- (4) notice to the ambulance provider's right to a contested case hearing on the amendment of the Ambulance Provider License.

(i) The provisional Ambulance Provider License shall be effective immediately upon its receipt by the licensee and shall be posted in a prominent location at the primary business location of the ambulance provider, accessible to public view, in lieu of the full license. The provisional license shall remain in effect until:

- (1) the Department restores the licensee to full licensure status; or
- (2) the Department revokes the licensee's license.

(j) The Department may revoke or suspend an Ambulance Provider License whenever:

- (1) the Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article; and
 - (B) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or

- (2) the Department finds that:
 - (A) the licensee has substantially failed to comply with the provisions of G.S. 131E, Article 7 and the rules adopted under that article; and
 - (B) although the licensee may be able to remedy the deficiencies within a reasonable period of time, it is not reasonably probable that the licensee will be able to remain in compliance with licensure rules for the foreseeable future; or
- (3) the Department finds that there has been any failure to comply with the provision of G.S. 131E, Article 7 and the rules adopted under that article that endanger the health, safety or welfare of the patients cared for and transported by the licensee.

(k) The issuance of a provisional Ambulance Provider License is not a procedural prerequisite to the revocation or

suspension of a license pursuant to Paragraph (j) of this Rule.

Statutory Authority G.S. 131E-155.1; 131E-156; 131E-157(a); 131E-159(b).

.1402 PROCEDURES FOR DENIAL, SUSPENSION, AMENDMENT, OR REVOCATION

Denial, suspension, amendment or revocation of a license, permit or certification shall follow the rules law regarding contested cases found in G.S. 150B.

Statutory Authority G.S. 131E-157(a); 131E-159(b).

.1403 APPLICATION PROCEDURES, REQUIRED FORMS

(a) All applications for licensure, ~~permits~~, certification, or recertification must be filed with the Office of Emergency Medical Services on the appropriate forms.

(b) At a minimum, the following forms are required for application:

- (1) Certification Application Form for certification of personnel; and
- ~~(2) Medical Certification Form;~~
- ~~(3) EMT Recertification Continuing Education Verification Form; and~~
- ~~(4) Air Ambulance Report Form.~~
- (2) Ambulance Provider License Application Form for issuance of licenses.

(c) EMS providers shall complete all forms, surveys, and requests for data, as required by the Office of Emergency Medical Services.

Statutory Authority G.S. 131E-155.1; 131E-157(a); 131E-159(b).

SECTION .1500 - AMBULANCE PROVIDER LICENSING REQUIREMENTS

.1501 LICENSING REQUIREMENTS: AMBULANCE PROVIDER

(a) To become licensed as an ambulance provider, a person, firm, corporation, or association shall meet the following criteria:

- (1) Demonstrate the intent and ability to operate an "ambulance" as defined in G.S. 131E-155;
- (2) Present evidence of the intent to apply for a permit for all ambulances which will be in service as required by G.S. 131E-156;
- (3) Submit a written plan detailing how the provider will assure that adequate certified personnel are available to respond to all calls as required by G.S. 131E-158;
- (4) Where there is a franchise ordinance in effect which covers the proposed service area, have a current franchise to operate or present written evidence of intent to issue a franchise from the

franchisor; and

- (5) Present written documentation of a standard operating procedure for the systematic and periodic inspection, repair and maintenance of permitted ambulances.

(b) An Ambulance Provider License may be renewed by presenting documentation that the provider meets the criteria found in Paragraph (a) of this Rule.

(c) Applications for Ambulance Provider License must be received by the Office of Emergency Medical Services at least 30 days prior to the date that the provider proposes to initiate service. Applications for renewal of an Ambulance Provider License must be received by the Office of Emergency Medical Services at least 30 days prior to the expiration date of the current license.

(d) As of the effective date of this Rule, ambulance providers currently operating in North Carolina with ambulances permitted by the Department may continue to operate without an ambulance provider license until such time as the permitted vehicles are due for annual inspection by the Department. At that time, a representative of the Department will assist the provider in completing the proper forms to obtain an ambulance provider license.

Statutory Authority G.S. 131E-155.1.

.1502 ISSUANCE OF LICENSE

(a) Only one license shall be issued to each ambulance provider. The Department shall issue a license to the ambulance provider following verification of compliance with applicable laws and rules.

(b) Licenses are not transferable.

(c) The license shall be posted in a prominent location accessible to public view at the primary business location of the ambulance provider.

Statutory Authority G.S. 131E-155.1.

.1503 LENGTH OF LICENSURE

Ambulance Provider Licenses shall remain in effect up to six years, unless any of the following occurs:

- (1) the Department imposes an administrative sanction which specifies license expiration;
- (2) closure of the ambulance provider;
- (3) change of ownership of the ambulance provider;
- or
- (4) substantial failure to comply with Rule .1501(a) of this Section.

Statutory Authority G.S. 131E-155.1.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3R .0111, .0215, .0904, .1125 - .1127, .2012 - .2014, .2410 - .2412, .2510 - .2512,

.2612 - .2613, .2810, .3909; amend 3R .0110, .0213 - .0214, .0303 - .0305, .0317, .1214, .1216, .1413 - .1414, .1613 - .1615, .1713 - .1714, .1912 - .1914, .1916, .2002, .2402, .2502, .2802, .2806, .3103, .3204, .3401, .3502, .3902 - .3903, .4002 - .4007, .4012, .4102 - .4105, .4202, .4204; repeal 3R .0109, .1003, .1113, .1115 - .1120, .1124, .1218 - .1219, .1302, .1304 - .1309, .1418 - .1419, .1618 - .1619, .1719 - .1720, .1917 - .1918, .2004 - .2008, .2117, .2120, .2319 - .2320, .2404 - .2409, .2503 - .2509, .2603, .2605, .2607 - .2610, .2718 - .2719, .2803 - .2805, .2807, .2809, .3107 - .3108, .3206 - .3207, .3306, .3406 - .3407, .3503, .3506 - .3507, .3606 - .3607, .3706 - .3707, .3806 - .3807, .3904, .3907 - .3908, .4008, .4010 - .4011, .4106 - .4107, and .4206 - .4207.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on November 2, 1995 at the Division of Facility Services, Council Building, Public Hearing Room 201, 701 Barbour Drive, Raleigh, NC 27626-0530.

Reason for Proposed Action: To eliminate rules that have become obsolete or duplicate existing statutes and rules, to reduce a large number of rules into a more organized manner, and to amend and streamline existing rules that the public must address in certificate of need applications.

Comment Procedures: Any interested person may present comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone number (919) 733-2342. Please submit your written comments to Mr. Jackie Sheppard at the above address no later than November 15, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .0100 -GENERAL INFORMATION

.0109 NAME AND ADDRESS OF AGENCY

~~The agency is the Certificate of Need Section in the Division of Facility Services, North Carolina Department of Human Resources. The address of the agency is 701 Barbour Drive, Raleigh, North Carolina, 27603. The telephone number of the agency is 919-733-6360.~~

Statutory Authority G.S. 131E-177.

.0110 DEFINITIONS

(a) The definitions used in G.S. 131E-176 shall apply to all the rules of this Subchapter.

(b) "Home health agency office", as that phrase is used in G.S. 131E-176(9b) and G.S. 131E-176(16)o, means any site that a home health agency markets or advertises in the yellow or white pages of any telephone directory, in any directory of home health agencies, any inventory of home health services, any promotional material, any agency letterhead, or any other documents distributed to the public; or, any site where a home health agency does any one or more of the following activities:

- (1) receives client referrals in person, by telephone, or by any other means of communication;
- (2) dispatches staff to serve home health patients;
- (3) maintains or stores client service records or patient medical records;

(c) "In use", as that phrase is used in G.S. 131E-176(16)s, means frequent, regular, periodic, or recurrent use and not occasional, sporadic, isolated, or incidental use.

Statutory Authority G.S. 131E-177.

.0111 LOCATION OF THE AGENCY

The agency is the Certificate of Need Section in the Division of Facility Services, North Carolina Department of Human Resources. The location of the agency is 701 Barbour Drive, Raleigh, North Carolina, 27603. The mailing address of the agency is PO Box 29530, Raleigh, North Carolina, 27626-0530. The telephone number of the agency is 919-733-6360.

Statutory Authority G.S. 131E-177.

SECTION .0200 - EXEMPTIONS

.0213 HEALTH MAINTENANCE ORGANIZATIONS

(a) G.S. 131E-180 provides when a health care facility that is controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations must obtain a certificate of need. G.S. 131E-180 further provides that such a health care facility is exempt from obtaining a certificate of need if it applies for and receives from the agency an exemption. The agency shall grant an exemption if the health care facility files an application for exemption in accordance with this Rule and if the agency finds that the health care facility is a qualified applicant as defined in G.S. 131E-180(b).

(b) The application for exemption shall be given on the form "Application for Health Maintenance Organization Exemption." This form may be obtained by contacting the agency at the address and telephone number stated in Rule .0109 of this Subchapter.

(c) The application must be completed and delivered to the agency before the health care facility offers or develops the new institutional health service. The application is not filed in accordance with this Rule until it is deemed com-

pleted.

(d) The agency shall promptly acknowledge in writing receipt of the application. The application shall be deemed complete unless the agency, within seven days after receipt, mails a letter to the applicant which states that the application was incomplete and which specifies what information is necessary to make it complete. As soon as the requested information is delivered to the agency, the application shall be deemed complete and filed in accordance with this Rule.

(e) Within 30 days after receipt of the completed application, the agency will determine if the applicant qualifies for an exemption. If the agency determines the applicant qualifies for an exemption he may offer and develop the new institutional health service. If the applicant does not qualify, the person shall not offer the new institutional health service unless a certificate of need is obtained. If a certificate of need is required, the application and review under this Rule shall be deemed as compliance with Rule .0303 of this Subchapter.

(f) Any affected person, as defined in G.S. 131E-188(e), may obtain a contested case hearing on a decision of the agency under this Rule by following the procedures set forth in Section .0400 of this Subchapter.

(a) Applications for an exemption under N.C.G.S. 131E-180 will be reviewed pursuant to the review schedule in 10 NCAC 3R .3020 that is applicable for the new institutional health service for which the inpatient health service facility is requesting the exemption.

(b) An applicant proposing to request an exemption under G.S. 131E-180 shall complete the certificate of need application form for the new institutional health service for which the exemption is requested and the supplemental form for a health maintenance organization exemption.

(c) Applications for an exemption shall be filed and reviewed in accordance with 10 NCAC 3R .0305 - .0309.

(d) The Agency shall determine whether the applicant for the exemption is a qualified applicant and whether the application for exemption demonstrates that the proposed new institutional health service:

- (1) is required to meet the needs of what the Agency determines to be a reasonably projected membership of the HMO; and
- (2) is a cost-effective alternative to providing the service to the projected membership of the HMO.

(e) If the Agency decision is to not grant the exemption, the applicant shall not develop or offer the new institutional health service without first obtaining a certificate of need.

(f) If a decision is made that a certificate of need is required, the review for the certificate of need shall be conducted in the same review period as for the exemption. Agency shall determine if the application conforms with the applicable review criteria of G.S. 131E-183(a) and (b). The Agency shall determine which plans, standards and criteria are applicable to the review of the proposal. If the proposal is not consistent with all applicable criteria in G.S.

131E-183(a), the Agency may approve or conditionally approve the proposal for a certificate of need if it conforms with the criteria set forth in G.S. 131E-180(e)(i)-(ii) and G.S. 131E-183(a)(10).

Statutory Authority G.S. 131E-177; 131E-180.

.0214 REPLACEMENT EQUIPMENT

(a) The purpose of this Rule is to define the terms used in the definition of "replacement equipment" set forth in G.S. 131E-176(22a).

(b) "Activities essential to acquiring and making operational the replacement equipment" means those activities which are indispensable and requisite, absent which the replacement equipment could not be acquired or made operational.

(c) "Comparable medical equipment" means equipment which is functionally similar and which is used for the same diagnostic or treatment purposes.

(d) Replacement equipment is comparable to the equipment being replaced if:

- (1) it has the same basic technology as the equipment currently in use, although it may possess expanded capabilities due to technological improvements; and
- (2) it is functionally similar and is used for the same diagnostic or treatment purposes as the equipment currently in use and is not used to provide a new health service; and
- (3) the acquisition of the equipment does not result in more than a 10% increase in patient charges or per procedure operating expenses within the first twelve months after the replacement equipment is acquired; and
- (4) it will be located on the same site or campus as the equipment currently in use.

(e) Replacement equipment is not comparable to the equipment being replaced if:

- (1) the replacement equipment is new or reconditioned, the existing equipment was purchased second-hand, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or
- (2) the replacement equipment is new, the existing equipment was reconditioned when purchased, and the replacement equipment is purchased less than three years after the acquisition of the existing equipment; or
- (3) the replacement equipment is permanently fixed equipment and the existing equipment is one piece of mobile equipment which is could be shared between two or more facilities; facilities; or
- (4) the replacement equipment is capable of performing procedures that could result in the provision of a new health service or type of procedure that has not been provided with the

- (5) existing equipment; or the replacement equipment is purchased and the existing equipment is leased, unless the lease is a capital lease.

Statutory Authority G.S. 131E-177(1).

.0215 PSYCHIATRIC BED CONVERSIONS

If psychiatric beds are established pursuant to N.C.G.S. 131E-184(c), those beds shall remain psychiatric beds only as long as the contract required in G.S. 131E-184(c) remains in effect. If that contract is terminated, then the facility shall:

- (1) obtain a certificate of need to convert the psychiatric beds back to acute care beds prior to termination of the contract, or
- (2) terminate the provision of psychiatric services in the beds.

Statutory Authority G.S. 131E-177; 131E-180.

SECTION .0300 - APPLICATION AND REVIEW PROCESS

.0303 LETTER OF INTENT

(a) Potential applicants are urged to contact the agency as soon as possible after determining the scope or possible scope of the project. The purpose of such discussions is to determine on a preliminary basis whether a certificate of need is required, which review schedule or schedules might be applicable, and to address any other questions that may arise.

(b) An applicant ~~must~~ shall file a letter of intent with the agency no later than the date the application is required to be submitted to the agency in Rule .0305 of this Section. A conference with the agency may be substituted for the letter of intent. The conference may be held at the agency or by telephone.

(c) The letter of intent or conference shall describe the:

- (1) project;
- (2) ~~annual operating costs, if a new health service is proposed;~~
- (2) (3) estimated total capital cost of the project; and
- (3) (4) proposed filing date of the application.

(d) If more than six months have passed since the filing of the letter of intent or the conference and an application has not been filed with the agency, a new letter of intent must be filed or another conference must be held before an application or applications are filed.

Statutory Authority G.S. 131E-177.

.0304 DETERMINATION OF REVIEW

(a) After receipt of a letter of intent, the agency shall determine whether the proposed project requires a certificate of need.

(b) When any of the equipment listed in G.S.

131E-176(16)(f1) or (p) is acquired in parts or piecemeal fashion, the acquisition is determined to require a certificate of need on the date that the components are assembled.

(c) (b) If it is the agency determined determines that the project requires a certificate of need, the agency will shall determine the appropriate review category or categories for the proposed project, the type or types of application forms to be submitted, the number of separate applications to be submitted, the applicable review period for each application, and the deadline date for submitting each application.

(d) (e) Copies of the application forms may be obtained from the agency.

(e) (d) Proposals requiring review will shall be reviewed according to the categories and schedule set forth in the duly adopted State Medical Facilities Plan in effect at the time the scheduled review period commences.

(f) (e) Applications are competitive if they, in whole or in part, are for the same or similar services and the agency determines that the approval of one or more of the applications may result in the denial of another application reviewed in the same review period.

Statutory Authority G.S. 131E-177.

.0305 FILING APPLICATIONS

(a) An application shall not be reviewed by the agency until unless it is filed in accordance with this Rule.

(b) An original and a one duplicate copy of the application shall be received by filed with the agency by no later than 5:00 6:00 p.m. on the last working day prior to 15 days before the first day of the scheduled review period. An application shall be deemed to have been timely filed if:

- (1) the application is actually received by the agency on or before the filing deadline;
- (2) the application is placed into the custody of an overnight express carrier on or before the deadline; or
- (3) the application is mailed by first class mail and is postmarked by no later than 12:00 midnight on the day of the filing deadline.

An application shall not be included in a scheduled review if it is not received by the agency by this deadline- timely filed, except as provided in Paragraph (i), of this Rule.

(c) Each applicant shall transmit, with the application, a fee to be determined according to the following formula:

- (1) With each application proposing the addition of a sixth bed to an existing or approved five bed intermediate care facility for the mentally retarded, the proponent shall transmit a fee in the amount of two thousand dollars (\$2,000).
- (2) With each application, other than those referenced in Subparagraph (b)(1) Subparagraph (c)(1) of this Rule, proposing no capital expenditure or a capital expenditure of up to, but not including, one million dollars (\$1,000,000), the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500).

- (3) With each application, other than those referenced in Subparagraph (b)(1) Subparagraph (c)(1) of this Rule, proposing a capital expenditure of one million dollars (\$1,000,000) or greater, the proponent shall transmit a fee in the amount of three thousand five hundred dollars (\$3,500), plus an additional fee equal to .003 of the amount of the proposed capital expenditure in excess of one million dollars (\$1,000,000). The additional fee shall be rounded to the nearest whole dollar. In no case shall the total fee exceed seventeen thousand five hundred dollars (\$17,500).

(d) (e) After an application is filed, the agency shall determine whether it is complete for review. An application shall not be considered complete for review if:

- (1) the applicant requisite fee has not been received by the agency has not submitted the requisite fee; or
- (2) the applicant has not submitted one a signed original and one duplicate copy of the have not been submitted to the agency on the appropriate application form- application; or
- (3) the applicant has not used the application form specified by the agency.

(e) (d) If the agency determines the application is not complete for review, it shall mail notice of such determination to the applicant within five business days after the application is filed received by the agency and shall specify what is necessary to complete the application. If the agency determines the application is complete, it shall mail notice of such determination to the applicant prior to the beginning of the applicable review period.

(f) (e) Information Material requested by the agency to complete the application must be received by shall be filed with the agency by no later than 5:00 6:00 p.m. on the last working day before the first day of the scheduled review period. The material shall be deemed to have been timely filed if:

- (1) the material is actually received by the agency on or before the filing deadline;
- (2) the material is placed into the custody of an overnight express carrier on or before the deadline; or
- (3) the material is mailed by first class mail and is postmarked by no later than 12:00 midnight on the day of the filing deadline.

The review of an application shall commence in the next applicable review period that commences after the application has been determined to be complete.

(g) (f) If an application is withdrawn by the applicant before the first day of the applicable review period, the application fee, if paid, shall be refunded to the applicant.

(h) Upon the written request of an applicant, the agency may extend the deadline in Paragraphs .0305(b) and (e) of this Rule for 48 hours if the applicant's failure to meet the deadline was due to any of the following:

- (1) severe or inclement weather;
- (2) highway accidents causing traffic congestion and travel delay;
- (3) computer or word-processing malfunctions resulting in corruption and loss of data or inability to print data;
- (4) the death or serious illness of an applicant, application preparer, or any person in the immediate family of an applicant or application preparer; or
- (5) any other intervening or unforeseeable factor beyond the control of the applicant.

(i) The applicant shall submit its written request to the agency within 48 hours of the missed deadline and shall document the circumstances contributing to the applicant's failure to meet the deadline. The agency shall mail notice of its determination to the applicant within five days of receipt of the request.

Statutory Authority G.S. 131E-177; 131E-182; 1993 S.L. c. 383.

.0317 WITHDRAWAL OF A CERTIFICATE

(a) ~~A certificate of need may be withdrawn for the reasons set forth in G.S. 131E-189. Before a certificate of need is withdrawn the agency shall follow the procedures set forth in this Rule.~~

(b) ~~At any time after the date on which the certificate of need is issued the agency may commence a proceeding to withdraw a certificate of need. In determining whether to institute a withdrawal proceeding, the agency may consider the progress reports and any other information which it has received or obtained.~~

(a) ~~(e) Before the agency initiates a withdrawal proceeding, withdraws a certificate of need, pursuant to G.S. 131E-189, it shall send out a notice to the holder of the certificate providing an opportunity for the holder to demonstrate that: give the holder an opportunity to demonstrate that:~~

- (1) ~~it the holder is making a good faith effort to meet the timetable specified by the agency;~~
- (2) ~~it the holder is developing or operating the service in a manner consistent with the representations made in the application or with any condition or conditions the Department has placed on the certificate of need; and~~
- (3) ~~the holder has not no transfer of transferred ownership or control of the facility has been made prior to the completion of the project or licensure operation of the facility project without specific the prior written Department approval approval of the Department. The agency shall consider a transfer of ownership or control to have occurred if:~~

(A) ~~there is a change in the membership of the firm, association or partnership to whom the certificate was issued, involving the acquisition~~

~~of a 25 percent or greater share in the firm, association or partnership by someone who did not previously own a 25 percent or greater share; or~~

(B) ~~twenty five percent or more of the stock of the corporation to whom the certificate was issued is acquired by someone who did not previously own 25 percent or more of the stock.~~

(d) ~~The holder of the certificate shall have 15 days to respond to the notice and provide information as to why the certificate should not be withdrawn.~~

(e) ~~The agency shall review the information provided by the holder, or lack thereof, and shall make a determination as to whether to withdraw the certificate.~~

(f) ~~The holder of the certificate should be informed in writing within 45 days from the date of the notice of the agency's decision regarding the withdrawal.~~

(g) ~~A decision to withdraw a certificate immediately revokes the right of the holder of the certificate to continue the development or operation of the facility except under conditions approved by the Department.~~

(h) ~~A decision to not withdraw a certificate on any given occasion does not preclude the right of the agency to initiate proceedings to withdraw that certificate at a later date providing the agency follows the procedures outlined in this Rule.~~

(b) Ownership of a certificate is transferred when any person acquires a certificate from the holder by purchase, donation, lease, trade, or any comparable arrangement, even if the person who acquires the certificate is an owner, parent entity, subsidiary, or affiliate of the holder.

(c) Control is transferred when any person acquires a majority interest in the facility, project or holder or any parent entity of the facility, project or holder.

(d) "Parent entity" means any person, other than an individual, that controls, directly or indirectly, the facility, project or holder of a certificate.

(i) ~~In direct response to the 1987 Omnibus Budget Reconciliation Act's replacement of the terms "skilled nursing facility" and "intermediate care facility" with "nursing facility" for use by Medicaid certified nursing facilities, the CON Section will not withdraw a certificate of need if the holder of the certificate develops or operates a nursing facility without designating its nursing facility beds as either skilled nursing facility beds and/or intermediate care facility beds. In all other respects, the holder of the certificate shall develop and operate the facility in material compliance with representations made in the CON application and any conditions placed on the certificate by the Department.~~

Statutory Authority G.S. 131E-177; 131E-189.

SECTION .0900 - ENFORCEMENT AND SANCTIONS

.0904 ASSESSMENT OF CIVIL PENALTY

(a) In determining the amount of a penalty assessed for a violation in accordance with G.S. 131E-190(f), the Agency may consider, but is not limited to, the following factors in evaluating the degree and extent of harm and the cost of rectifying the damage caused by the violation:

- (1) the amount of revenues derived as a consequence of offering the service; and
- (2) the amount of the unauthorized capital expenditure; and
- (3) the amount expended in excess of 115 percent of the approved capital expenditure of a certificate of need; and
- (4) the person's record of compliance with the Certificate of Need Law and with the terms and conditions of any other certificate of need issued to that person; and
- (5) the degree of completion of the project; and
- (6) the number of patients served as a consequence of the violation; and
- (7) the number of procedures performed or treatments offered as a consequence of the violation; and
- (8) the number of days a service is offered as a consequence of the violation; and
- (9) whether the violation duplicates an existing or approved health service capability or facility; and
- (10) whether the conduct violated any judicial or administrative order, injunction, decree, or decision; and
- (11) whether the person impeded or attempted to obstruct the Department's investigation of the current violation; and
- (12) whether the development ceased prior to the offering of a new institutional health service; and
- (13) whether the person voluntarily terminated the project prior to the Department's investigation of the violation; and
- (14) whether the person voluntarily and truthfully cooperated with the Department's investigation of the violation.

(b) Payment of the penalty shall be due within 60 days from the date of notification of the penalty.

Statutory Authority G.S. 131E-177(1); 131E-190(f).

SECTION .1000 - SPECIAL CRITERIA AND STANDARDS: IN GENERAL

.1003 STATE MEDICAL FACILITIES PLAN

(a) The North Carolina State Medical Facilities Plan contains the following information:

- (1) inventory of certain categories of inpatient and outpatient health care facilities, including number of beds and utilization of beds;
- (2) type of services provided by each category of

health care facility;

- (3) projections of need for acute care hospitals (including rehabilitation services), long-term care facilities (including nursing homes, home health agencies, and hospice inpatient facilities), mental health facilities and end stage renal dialysis services for various geographical areas of the state;
- (4) statement of policies related to acute care facilities, rehabilitation services, long-term care, psychiatric facilities, chemical dependency facilities, and facilities for intermediate care for the mentally retarded, which are used with other criteria contained in this Subchapter and in G.S. 131E-183 and need projections to determine whether applications proposing additional beds and services of these types may be approved under the certificate of need program; and
- (5) the certificate of need review schedule and description of review categories.

(b) The annually published State Medical Facilities Plan approved by the Governor, and any duly adopted amendments or additions thereto, is hereby adopted by reference pursuant to G.S. 150B-14(e) as a rule for the calendar year during which it is in effect.

(c) This plan may be purchased from the Division of Facility Services, 701 Barbour Drive, Raleigh, North Carolina. This plan is also available for inspection at the Division of Facility Services.

Statutory Authority G.S. 131E-176(25); 131E-177(1); 131E-183(1); 42 U.S.C. 300K-2.

SECTION .1100 - CRITERIA AND STANDARDS FOR NURSING FACILITY SERVICES

.1113 DEFINITIONS

The definitions in this Rule will apply to all rules in this Section:

- (1) A nursing facility means a health care facility as defined in G. S. 131E-101(6). The facility rendering nursing services must:
 - (a) have a physician, a registered nurse or a medical staff responsible for the execution of policies;
 - (b) maintain clinical records on all patients;
 - (c) provide 24-hour nursing service, via registered nurse and licensed practical nurses, to the patients who require nursing care;
 - (d) employ at least one registered nurse full time;
 - (e) maintain a utilization review plan.
- (2) "Brain injury extended care" is defined as a multi-discipline maintenance program for patients who have incurred brain damage caused by external physical trauma and who have completed a primary course of rehabilitative treatment and have reached a point of no gain or progress for more than three consecutive months. Services are

provided through a medically supervised interdisciplinary process and are directed toward restoring the individual to the optimal level of physical, cognitive and behavioral functioning.

- (3) ~~"Ventilator dependent care" means a health service as defined in 10 NCAC 3H.~~

Statutory Authority G.S. 131E-177(1).

.1115 CAPACITY IN THE FACILITY AND IN THE HEALTH SERVICE AREA

(a) ~~Proposals filed by or on behalf of nursing facilities must be consistent with the North Carolina State Medical Facilities Plan.~~

(b) ~~A proposal to provide new or expanded nursing facility services must specify the numbers of nursing facility beds to be operated following the completion of the proposed project.~~

(c) ~~A proposal to provide new nursing facility beds shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the proposal, of the number of functional nursing facility beds within the facility in which the new beds are to be operated is at least 90 percent.~~

(d) ~~A proposal to convert existing licensed domiciliary beds to nursing facility beds must demonstrate that the proponent has adequately planned for the relocation or displacement of existing domiciliary residents. Additionally such relocation or displacement must not result in excessive additional costs or unreasonable hardship to current domiciliary residents who are displaced or relocated and that adequate resources either exist or are being developed within the applicants' service area to meet the needs of the displaced residents.~~

(e) ~~Proposals filed by or on behalf of facilities for demonstration special care units must be consistent with demonstration special care bed need projections and policies in the North Carolina State Medical Facilities Plan.~~

(f) ~~A proposal to establish a demonstration special care unit shall not be approved if approval of the proposal will result in any reduction of the existing supply of nursing facility beds in the service area.~~

(g) ~~A proposal to establish a demonstration special care unit must demonstrate that the addition of the unit shall not result in a diminishing of services or unreasonable hardship to current nursing facility patients and/or domiciliary residents.~~

Statutory Authority G.S. 131E-177(1).

.1116 SCOPE OF SERVICES OFFERED

(a) ~~Proposals involving the opening of new nursing facilities or the conversion of existing non nursing facility beds for the provision of nursing care services shall not be approved unless all current licensure standards have been met in accordance with G.S. Chapter 131E, Article 6, Part A. Documentation must be presented to indicate that all~~

~~services required by law can be provided.~~

(b) ~~Proposals must delineate services to be offered and provide assurance that coordination will exist between the proponent and other health care providers in the service area.~~

(c) ~~A proposal to establish a demonstration special care unit shall not be approved unless all current licensure standards have been met in accordance with G.S. 131E, Article 6, Part A. and the facility has not operated on a Provisional License or had its admissions suspended within 18 months of the submittal of the proposal.~~

(d) ~~A proposal to establish a demonstration special care unit must delineate all services to be offered for each designated category of patient proposed to be served in the special care unit.~~

Statutory Authority G.S. 131E-177(1).

.1117 PROJECTED UTILIZATION/OCCUPANCY

(a) ~~A proposal to provide new or expanded nursing facility services must project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies and case mix are projected, must be clearly stated.~~

(b) ~~A proposal to provide new or expanded nursing facility services shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. Furthermore a proposal to provide new or expanded nursing facility services via a net bed addition to the facility's total nursing facility bed capacity shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed projects. All assumptions, including the specific methodologies by which occupancies and case mix are projected, must be clearly stated.~~

Statutory Authority G.S. 131E-177(1).

.1118 PROJECTED PATIENT ORIGIN

(a) ~~A proposal to provide new or expanded nursing facility services must project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, must be clearly stated.~~

(b) ~~A proposal to provide new or expanded nursing facility services must show that at least 85 percent of the anticipated patient population lives within 45 minutes automobile driving time (one way) from the facility, with the exception that this standard may be waived for facilities, such as fraternal or religious facilities, facilities that are part of residential retirement centers, which make services available to large or geographically diverse populations.~~

Statutory Authority G.S. 131E-177(1).

.1119 SITE: BUILDING: AND EQUIPMENT

(a) ~~A proposal to provide new or expanded nursing facility services must specify the site on which the services are to be operated. If such site is neither owned by nor under option to the proponent, the proponent must provide a written commitment to diligently pursue acquiring the site if and when certificate of need approvals are granted, must specify a secondary site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.~~

(b) ~~A proposal to provide new or expanded nursing facility services must clearly demonstrate that consideration has been given to factors that may delay or prevent the development or offering of services on the proposed site.~~

(c) ~~A proposal to provide new or expanded nursing facility services must provide documentation to show that the services will be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies.~~

Statutory Authority G.S. 131E-177(1).

.1120 STAFFING

(a) ~~A proposal to provide new or expanded nursing facility services must provide documentation to show that the appropriate numbers and types of staff, particularly medical and nursing staff, will be available to support the services.~~

(b) ~~An applicant proposing to establish a demonstration special care unit shall document that all staffing requirements as stated in 10 NCAC 3H will be met for the provision of services to persons who require:~~

- (1) ~~brain injury extended care,~~
- (2) ~~ventilator dependent care, or~~
- (3) ~~other specialized types of care.~~

(c) ~~The applicant shall not be approved unless documentation is provided showing the availability and proximity of credentialed ancillary and support staff to the proposed demonstration special care unit.~~

Statutory Authority G.S. 131E-177(1).

.1124 ACCESSIBILITY TO SERVICES

(a) ~~A proposal to provide new or expanded nursing facility beds or a demonstration special care unit shall provide assurance that the facility will be certified for Medicaid and Medicare reimbursement upon completion of the project.~~

(b) ~~The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.~~

(c) ~~The applicant shall provide a copy of the written admissions policies identifying any prepayment or deposit~~

~~requirements for the facility and clearly stating the admissions requirements for the following payor categories:~~

- (1) ~~private pay,~~
- (2) ~~medicaid beneficiaries,~~
- (3) ~~medicare beneficiaries,~~
- (4) ~~uninsured indigent patients,~~
- (5) ~~underinsured indigent patients, and~~
- (6) ~~fully insured patients.~~

(d) ~~The applicant shall provide a written description of the billing procedures, including the credit collection policies, that will be utilized by the facility.~~

(e) ~~The applicant shall provide assurances that residents of North Carolina shall be given priority for admission to the demonstration special care unit.~~

(f) ~~The applicant shall provide documentation that the facility will match or exceed the average percent of patients in the combined categories of Medicare and Medicaid provided by the existing and approved nursing facilities in the proposed service area with the exception that this standard may be waived for a proposal to establish a demonstration special care unit provided that:~~

- (1) ~~documentation is submitted as evidence that the demonstration special care unit shall be accessible to persons in each of the payor categories described in Rule .1121(e) of this Section; and~~
- (2) ~~documentation is submitted that justifies the difference in the payor mix for the demonstration special care unit from the payor mix in existing and approved nursing facilities in the proposed service area.~~

Statutory Authority G.S. 131E-177(1).

.1125 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish new nursing facility beds shall project an occupancy level for the entire facility for each of the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

(b) An applicant proposing to establish new facility beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, shall be clearly stated.

(c) An applicant proposing to establish new nursing facility beds shall show that at least 85 percent of the anticipated patient population in the entire facility lives within 45 minutes normal automobile driving time (one-way) from the facility, with the exception that this standard may be waived for facilities that are located in isolated or remote locations, fraternal or religious facilities, or facilities that are part of licensed continuing care facilities which make services available to large or geographically diverse populations.

(d) An applicant proposing to establish new nursing facility beds shall specify the site on which the facility will

be located. If such site is neither owned by nor under option to the applicant, the applicant shall provide a written commitment to diligently pursue acquiring the site if and when certificate of need approvals are granted. The applicant shall specify at least one alternate site on which the services could be operated should acquisition efforts relative to the primary site ultimately fail, and shall demonstrate that the primary and alternate sites are available for acquisition.

(e) An applicant proposing to establish new nursing facility beds shall document that the primary site and alternate sites are suitable for development of a nursing facility with regard to water, sewage disposal, site development and zoning including the required procedures for obtaining zoning changes and a special use permit after a certificate of need is obtained.

(f) An applicant proposing to establish new nursing facility beds shall provide documentation to demonstrate that the physical plant will conform with all requirements as stated in 10 NCAC 3H.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1126 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to add nursing facility beds to an existing facility shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed nursing facility beds within the facility in which the new beds are to be operated was at least 90 percent.

(b) An applicant proposing to establish a new nursing facility or add nursing facility beds to an existing facility shall not be approved unless occupancy is projected to be at least 90 percent for the total number of nursing facility beds proposed to be operated, no later than two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, shall be clearly stated.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1127 REQUIRED STAFFING AND STAFF TRAINING

An applicant proposing to add nursing facility beds to an existing facility shall document how all staffing requirements as stated in 10 NCAC 3H or 10 NCAC 3C will be met for the provision of all proposed services.

Statutory Authority G.S. 131E-177(1); 131E-183.

SECTION .1200 - CRITERIA AND STANDARDS FOR INTENSIVE CARE SERVICES

.1214 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes new or expanded intensive care services shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing new or expanded intensive care services shall also submit the following additional information:

- (1) the number of intensive care beds currently operated by the applicant and the number of intensive care beds to be operated following completion of the proposed project;
- (2) documentation of the applicant's experience in treating patients at the facility during the past twelve months, including:
 - (A) the number of inpatient days of care provided to intensive care patients;
 - (B) the number of patients initially treated at the facility and referred to other facilities for intensive care services; and
 - (C) the number of patients initially treated at other facilities and referred to the applicant's facility for intensive care services.
- (3) the number of patients from the proposed service area who are projected to require intensive care services by the patients' county of residence in each of the first 12 quarters of operation, including all assumptions and methodologies;
- (4) the projected number of patients to be served and inpatient days of care to be provided by county of residence by specialized type of intensive care for each of the first twelve calendar quarters following completion of the proposed project, including all assumptions and methodologies;
- (5) data from actual referral sources or correspondence from the proposed referral sources documenting their intent to refer patients to the applicant's facility;
- (6) documentation which demonstrates the applicant's capability to communicate effectively with emergency transportation agencies;
- (7) documentation of written policies and procedures regarding the provision of care within the intensive care unit, which includes, but is not limited to the following:
 - (A) the admission and discharge of patients;
 - (B) infection control; ~~control; and~~
 - (C) safety procedures; ~~and~~
 - (D) scope of services.
- (8) documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity, separate from the rest of the facility, with controlled access;
- (9) documentation to show that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
- (10) a detailed floor plan of the proposed area drawn to scale; and
- (11) documentation of a means for observation by unit staff of all patients in the unit from at least

one vantage point.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1216 REQUIRED SUPPORT SERVICES

(a) An applicant proposing new or additional intensive care services shall document the extent to which the following items are available:

- (1) twenty-four hour on-call laboratory services including microspecimen chemistry techniques and blood gas determinations;
- (2) twenty-four hour on-call radiology services, including portable radiological equipment;
- (3) twenty-four hour blood bank services;
- (4) twenty-four hour on-call pharmacy services;
- (5) twenty-four hour on-call coverage by respiratory therapy;
- (6) oxygen and air and suction capability;
- (7) electronic ~~cardiovascular~~ physiological monitoring capability;
- (8) mechanical ventilatory assistance equipment including airways, manual breathing bag and ventilator/respirator;
- (9) endotracheal intubation capability;
- (10) cardiac pacemaker insertion capability;
- (11) cardiac arrest management plan;
- (12) patient weighing device for bed patients; and
- (13) isolation capability.

(b) If any item in Subparagraphs (a)(1) - (13) of this Rule will not be available, the applicant shall document the reason why the item is not needed for the provision of the proposed services.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1218 ACCESSIBILITY

(a) ~~The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.~~

(b) ~~The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and specifically stating the admission requirements for patients in each of the following payer categories:~~

- (1) ~~Medicare;~~
- (2) ~~Medicaid;~~
- (3) ~~Blue Cross and Blue Shield;~~
- (4) ~~Commercial Insurance;~~
- (5) ~~State Employees Health Plan;~~
- (6) ~~Self Pay (includes self pay, indigent and charity care); and~~
- (7) ~~Other as identified by the applicant.~~

(c) ~~The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the facility.~~

(d) ~~The applicant shall document that the members of the health care community in the service area, including the~~

~~Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1219 DATA REPORTING REQUIREMENTS

~~The facility shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- (1) ~~demographic data on patients treated;~~
- (2) ~~financial data; and~~
- (3) ~~clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .1300 - CRITERIA AND STANDARDS FOR OBSTETRIC SERVICES

.1302 DEFINITIONS

~~The definitions in this Rule will apply to all rules in this Section:~~

- (1) ~~"Normal obstetric services" means those routine services provided by an acute care hospital to the mother and fetus during pregnancy, labor, and delivery and to the mother after delivery.~~
- (2) ~~"High risk obstetric services" means those specialized services by an acute care hospital to the mother and fetus during pregnancy, labor, and delivery and to the mother after delivery. The services are characterized by specialized facilities and staff for the intensive care and management of high risk maternal and fetal patients before and during delivery.~~
- (3) ~~"Obstetric services" means any of the services defined in this Rule.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1304 CAPACITY IN THE FACILITY AND IN THE HEALTH SERVICE AREA

(a) ~~Proposals filed by or on behalf of hospital facilities for obstetric services must be consistent with the applicable North Carolina State Medical Facilities Plan, with the applicable North Carolina State Health Plan (the one in effect at time of final agency decision), and with the applicable health systems plan.~~

(b) ~~Proposals involving new or expanded obstetric beds must specify the numbers of obstetric care beds to be operated following the completion of the proposed project.~~

(c) ~~A proposal involving a net increase in obstetric bed capacity shall not be approved unless the overall average annual occupancy, over the 12 months immediately preceding the submission of the proposal, of the total number of~~

functional existing obstetric beds in the facility in which the proposed beds are to be operated is at least 60 percent for a 1-10 bed unit, 65 percent for an 11-20 bed unit, 70 percent for a 21-30 bed unit, and 75 percent for a unit of 31 beds or more.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1305 SCOPE OF SERVICES OFFERED

(a) A proposal to provide new or expanded normal obstetric services must document the extent to which the following will be available. If any item is not available, then substantive information must be given obviating the need for that item before approval for a new service can be given:

- (1) prenatal care for uncomplicated maternity cases and those with minor complications;
- (2) identified separate facilities for obstetrics;
- (3) competence to manage uncomplicated labor and delivery of the normal term newborn;
- (4) capabilities for continuous electronic fetal monitoring;
- (5) a continuing education program on neonatal resuscitation to produce competence among all delivery room personnel in the immediate evaluation and resuscitation of the newborn and at a minimum on the use of the following:
 - (A) resuscitation tray;
 - (B) umbilical catheter tray;
 - (C) medication kit;
 - (D) suction;
 - (E) positive pressure bag and mask;
 - (F) endotracheal tubes and adaptors;
 - (G) a functional infant laryngoscope;
 - (H) oxygen and compressed air with mixing valves and adequate radiant thermal support.
- (6) uncomplicated neonatal care of infants of appropriate gestational weight who are the products of a normal term pregnancy and who do not require other than emergency resuscitation;
- (7) a defined routine of transitional stabilization, examination, immediate care, and surveillance of all newborns;
- (8) a nursery able to provide supportive care for infants transferred back from neonatal intensive and intermediate care units after their acute problems have been resolved;
- (9) management of unexpected complications that arise so suddenly during labor and delivery and immediately after delivery and are of such severity that transfer is impossible. Services and facilities for emergencies shall include:
 - (A) cesarean section capability within 30 minutes at any hour;
 - (B) blood available on a 24 hour basis;
 - (C) anesthesia service on call on a 24 hour basis;
 - (D) radiology service on call on a 24 hour basis;

including capability to perform portable basic radiologic studies in the nursery;

- (E) clinical laboratory service on call on a 24 hour basis, with capability to perform studies necessary to basic newborn care (i.e., blood glucose, hematocrit, electrolytes, calcium, and blood gas and acid base analyses);
 - (F) capability to initiate intravenous therapy in the newborn;
 - (10) uncomplicated postpartum care, including postpartum recovery and observation area for mothers and newborns;
 - (11) management of unexpected postpartum complications. Facilities must include:
 - (A) isolation facilities for mother and newborn;
 - (B) blood available on a 24 hour basis;
 - (C) capability for bacteriologic diagnosis;
 - (D) capability for clinical laboratory services for newborns listed in (a)(9)(E) of this Rule;
 - (E) capability for x ray diagnosis for mother and newborn.
 - (12) data collection for evaluation of function and performance, locally and regionally.
- (b) A proposal to provide new or expanded high risk obstetric services must meet the requirements stated in (a) of this Rule as well as document the extent to which the following will be available. If any item is not available then substantive information must be given obviating the need for that item before approval for the service can be given:
- (1) a distinct, identifiable area for the provision of high risk obstetric services;
 - (2) competence to manage labor and delivery of premature newborn and other maternal, medical and obstetric high risk conditions;
 - (3) availability of neonatal care for low birth weight newborns and newborns with other complications;
 - (4) cesarean section capability within 20 minutes at any hour [supersedes (a)(9)(A) of this Rule];
 - (5) capability for antenatal fetal monitoring, including:
 - (A) chemical analyses of amniotic fluid and maternal hormone assays;
 - (B) diagnostic ultrasound;
 - (C) electronic fetal monitoring.
 - (6) twenty four hour in house anesthesia coverage.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1306 PROJECTED UTILIZATION/OCCUPANCY

(a) Proponents proposing new obstetric services must perform, or project to perform, at least 500 deliveries per year except that a variance from this standard will be allowed to the extent that a substantial portion of the population to be served reside more than 45 minutes automobile travel time (one way) from existing inpatient obstetric services.

~~(b) A proposal to provide new or expanded obstetric services must project an occupancy level for the total obstetric service for each of the first eight calendar quarters following the completion of the proposed project. An occupancy level must be projected for the normal obstetric service and for the high risk obstetric service, if a high risk service is to be available. All assumptions, including the specific methodologies by which occupancies are projected, must be clearly stated.~~

~~(c) A proposal to provide new obstetric services shall not be approved unless the annual occupancy is projected to be 50 percent after one year following the completion of the proposed project for the total number of obstetric beds proposed to be operated. Occupancy is projected to be 60 percent for a 1-10 bed unit, 65 percent for a 11-20 bed unit, 70 percent for a 21-30 bed unit, and 75 percent for a unit of 31 beds or more after two years following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, must be clearly stated.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1307 PROJECTED PATIENT ORIGIN

~~(a) A proposal to provide new or expanded obstetric services must project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected, must be clearly stated.~~

~~(b) A proposal to provide new or expanded normal obstetric services must document that at least 90 percent of the anticipated patient population is within 45 minutes automobile driving time (one way) from the facility.~~

~~(c) A proposal to provide new or expanded high risk obstetric services must document that at least 90 percent of the anticipated patient population is within 90 minutes automobile driving time (one way) from the facility, with the exception that there may be a variance from the 90 percent standard for institutions with very specialized levels of obstetric care to a large and geographically diverse population.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1308 SITE AND EQUIPMENT

~~A proposal to provide new or expanded obstetric services must provide documentation to show that the services will be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1309 STAFFING

~~(a) A proposal to offer new or expanded obstetric services must provide documentation to show that the appropriate types and numbers of staff, particularly qualified medical and nursing staff, will be available to support the services.~~

~~(b) A proposal to offer new or expanded high risk obstetric services must provide documentation to show that such services will:~~

- ~~(1) be coordinated by a registered professional nurse who has completed an organized educational program in high risk obstetric nursing;~~
- ~~(2) be under the direction of a physician with training and experience in high risk obstetrics.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .1400 - CRITERIA AND STANDARDS FOR NEONATAL SERVICES

.1413 DEFINITIONS

The definitions in this Rule shall apply to all rules in this Section:

- (1) "Approved neonatal service" means a neonatal service that was not operational prior to the beginning of the review period but that had been issued a certificate of need or for which development had been initiated prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12.
- (2) "Existing neonatal service" means a neonatal service in operation prior to the beginning of the review period.
- (3) "High-risk obstetric patients" means those patients requiring specialized services provided by an acute care hospital to the mother and fetus during pregnancy, labor, delivery and to the mother after delivery. The services are characterized by specialized facilities and staff for the intensive care and management of high-risk maternal and fetal patients before and during before, during, and after delivery.
- (4) "Level I neonatal service" means those routine services provided by an acute care hospital to normal full-term and pre-term infants weighing at least 2000 grams at birth or infants of any weight who are convalescing from Level II or Level III services. Level I neonatal services include the observation, screening, and stabilization of: infants following birth who are served in a bassinet; infants who are not sick but who require special care and frequent feedings; infants who no longer require Level II or Level III neonatal services, but who still require more nursing hours than normal infants; and infants who require close observation in a licensed acute care bed.
- (5) "Level II neonatal service" means the performance of Level I neonatal services, plus the management of high-risk, small, and sick neonates with a moderate degree of illness that are admitted within the hospital or transferred from another facility. Level II neonatal services involve the management of newborns weighing between approximately

1,500-2,500 grams (or approximately 32 and less than 36 completed weeks of gestational age) that are relatively healthy, or involve intermediate care services for sick infants who do not require intensive care but who do require six to twelve nursing hours per day. Level II neonatal services are provided in a licensed acute care bed.

- (6) "Level III neonatal service" means the performance of Level I and Level II neonatal services plus the management of high-risk newborns weighing less than 1,500 grams (or approximately under 32 weeks of gestational age), which requires neonatal expertise. Level III neonates require constant nursing care, including but not limited to continuous cardiopulmonary and other supportive care, care required for neonatal surgery patients and other intensive care services. Level III neonatal services are provided in a licensed acute care bed.
- (7) "Neonatal intensive care services" is shall have the same meaning as defined in G.S. 131E-176(15b).
- (8) "Neonatal service area" means a geographic area defined by the applicant from which the patients to be admitted to the service will originate.
- (9) "Neonatal services" means any of the Level I, Level II or Level III services defined in this Rule.
- (10) "Obstetric services" means any normal or high-risk services provided by an acute care hospital to the mother and fetus during pregnancy, labor, delivery and to the mother after delivery.
- (11) "Perinatal services" means services provided during the period shortly before and after birth.
- (12) "Perinatal region" means a geographic area of the state as established by the Perinatal Council. A copy of the perinatal regions may be obtained from the Division of Maternal and Child Health, Department of Environment, Health and Natural Resources, 1330 St. Mary's Street, Raleigh, NC, 27605-3248.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1414 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a new neonatal service or to add a bed to an existing neonatal service shall use the Acute Care Facility/Medical Equipment application form.

(b) The applicant shall provide the following additional information:

- (1) the current number of Level I bassinets, Level I beds, Level II beds and Level III beds operated by the applicant;
- (2) the proposed number of Level I bassinets, Level I beds, Level II beds and Level III beds to be operated following completion of the proposed project;
- (3) evidence of the applicant's experience in treating

the following patients at the facility during the past twelve months, including:

- (A) the number of obstetrical patients treated at the acute care facility;
 - (B) the number of neonatal patients treated in Level I bassinets, Level I beds, Level II beds and Level III beds, respectively;
 - (C) the number of inpatient days at the facility provided to obstetrical patients;
 - (D) the number of inpatient days provided in Level I beds, Level II beds and Level III beds, respectively;
 - (E) the number of high-risk obstetrical patients treated at the applicant's facility and the number of high-risk obstetrical patients referred from the applicant's facility to other facilities or programs; and
 - (F) the number of neonatal patients referred to other facilities for services, identified by required level of neonatal service (i.e. Level I, Level II or Level III);
- (4) the projected number of neonatal patients to be served identified by Level I, Level II and Level III neonatal services and by county of residence for each of the first twelve quarters of operation following the completion of the project, including the methodology and assumptions used for the projections;
 - (5) the projected utilization of the Level I bassinets, Level I beds, Level II beds and Level III beds, respectively, by county of residence for each of the first twelve quarters of operation following completion of the project, including the methodology and assumptions used for the projections;
 - (6) if proposing to provide Level I neonatal services, documentation that at least 90 percent of the anticipated patient population is within 45 30 minutes driving time one-way from the facility;
 - (7) if proposing to provide Level I neonatal services, documentation of a written plan to transport infants to Level II or Level III neonatal services as the infant's care requires;
 - (8) if proposing to provide Level II or Level III neonatal services, documentation that at least 90 percent of the anticipated patient population is within 90 minutes driving time one-way from the facility, with the exception that there shall be a variance from the 90 percent standard for facilities which demonstrate that they provide very specialized levels of neonatal care to a large and geographically diverse population, or facilities which demonstrate the availability of air ambulance services for neonatal patients;
 - (9) evidence that existing and approved neonatal services and obstetric services in the applicant's perinatal region and in the applicant's defined neonatal service area are unable to accommodate

- the applicant's projected need for additional Level II and Level III services;
- (10) documentation of the availability of existing obstetric services; ~~services and the~~ identification of all obstetrics programs and neonatal services which currently serve patients from the applicant's primary service area; and for those applicants proposing to establish or expand Level II and III neonatal services, the availability of high risk OB services at the site of the applicant's planned neonatal service.
 - (11) an analysis of the proposal's impact upon existing and approved neonatal services in the same perinatal region(s) and those perinatal regions adjacent to the perinatal region(s) in which the applicant proposes to provide services, including but not limited to the proposal's effect on the utilization of existing neonatal services, except when an applicant demonstrates that they provide very specialized levels of neonatal care to a large and geographically diverse population;
 - (12) evidence that the applicant shall have access to a transport service with at least the following components:
 - (A) trained personnel;
 - (B) transport incubator;
 - (C) emergency resuscitation equipment;
 - (D) oxygen supply, monitoring equipment and the means of administration;
 - (E) portable cardiac and temperature monitors; and
 - (F) a mechanical ventilator;
 - (13) documentation that the new or additional neonatal service shall be coordinated with the existing statewide perinatal network, including but not limited to:
 - (A) the Division of Maternal and Child Health of the Department of Environment, Health and Natural Resources,
 - (B) the physicians' statewide neonatal bed locator system,
 - (C) existing neonatal services,
 - (D) existing obstetrical services,
 - (E) home health care agencies,
 - (F) other hospitals, and
 - (G) local Departments of Social Services;
 - (14) copies of written policies which provide for parental participation in the care of their infant, as the infant's condition permits, in order to facilitate family adjustment and continuity of care following discharge; and
 - (15) copies of written policies and procedures regarding the scope and provision of care within the neonatal service, including but not limited to the following:
 - (A) the admission and discharge of patients;
 - (B) infection control;
 - (C) pertinent safety practices; and

- (D) the triaging of patients requiring consultations, including the transfer of patients to another ~~facility-~~ facility; and
 - (E) the protocol for obtaining emergency physician care for a sick infant.
- (c) An applicant proposing to provide new or additional neonatal services shall provide the following:
- (1) documentation that the proposed service shall be operated in an area organized as a physically and functionally distinct entity with controlled access;
 - (2) documentation to show that the new or additional Level I, Level II or Level III neonatal services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies;
 - (3) a detailed floor plan of the proposed area drawn to scale;
 - (4) documentation of direct or indirect visual observation by unit staff of all patients from one or more vantage points; and
 - (5) documentation that the floor space allocated to each bed and bassinet shall accommodate equipment and personnel to meet anticipated contingencies.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1418 DATA REPORTING REQUIREMENTS

~~The facility shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1419 ACCESSIBILITY

~~(a) The applicant shall provide documentation describing the mechanism that shall be used to insure that the projected number of medically underserved shall be served in the unit.~~

~~(b) The applicant shall provide a copy of the written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admissions requirements for each of the following payor categories:~~

- ~~(1) Medicare;~~
 - ~~(2) Medicaid;~~
 - ~~(3) Blue Cross and Blue Shield;~~
 - ~~(4) Commercial Insurance;~~
 - ~~(5) State Employees Health Plan;~~
 - ~~(6) Self Pay (includes self pay, indigent and charity care); and~~
 - ~~(7) Other as identified by the applicant.~~
- ~~(c) The applicant shall provide a written description of the~~

billing procedures, including the credit collection policies, that shall be utilized by the facility.

(d) ~~The applicant shall document that the members of the health care community in the applicant's neonatal service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .1600 - CRITERIA AND STANDARDS FOR CARDIAC CATHETERIZATION EQUIPMENT AND CARDIAC ANGIOPLASTY EQUIPMENT

.1613 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved" means the equipment was not in operation prior to the beginning of the review period and had been issued a certificate of need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12.
- (2) "Capacity" of an item of cardiac catheterization equipment or cardiac angioplasty equipment means 1270 diagnostic- equivalent procedures per year. One therapeutic cardiac catheterization procedure is valued at 1.67 diagnostic- equivalent procedures. One cardiac catheterization procedure performed on a patient age 17 14 or under is valued at two diagnostic-equivalent procedures. All other procedures are valued at one diagnostic-equivalent procedure.
- (3) "Cardiac angioplasty equipment" ~~is shall have the same meaning as~~ defined in G.S. 131E-176(2e).
- (4) "Cardiac catheterization" means a diagnostic or therapeutic procedure ~~or an electrophysiology procedure~~ performed using cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room, whereby a flexible tube is inserted into the patient's body and advanced into the heart chambers to perform a hemodynamic or angiographic examination or therapeutic intervention of the left or right heart chamber, or coronary arteries. A cardiac catheterization procedure does not include a simple right heart catheterization for monitoring purposes as might be done in an electrophysiology laboratory, pulmonary angiography procedure, cardiac pacing through a right electrode catheter, temporary pacemaker ~~insertion~~ insertion, or procedures performed in dedicated angiography or electrophysiology rooms.
- (5) "Cardiac catheterization equipment" ~~is shall have the same meaning as~~ defined in G.S.

131E-176(2f).

- (6) "Cardiac catheterization procedure" means a single episode of diagnostic or therapeutic catheterization ~~or electrophysiology procedure~~ which occurs during one visit to a cardiac catheterization room.
- (7) "Cardiac catheterization room" means a room or a mobile unit in which there is cardiac catheterization or cardiac angioplasty equipment for the provision performance of cardiac catheterization ~~services~~ procedures. Dedicated angiography rooms and electrophysiology rooms are not cardiac catheterization rooms.
- (8) "Cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 45 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 90 road miles.
- (9) "Cardiac catheterization services" means the provision of diagnostic cardiac catheterization procedures, or therapeutic cardiac catheterization procedures ~~or electrophysiology procedures~~ performed utilizing cardiac catheterization equipment or cardiac angioplasty equipment in a cardiac catheterization room.
- (10) "Comprehensive cardiac services program" means a cardiac services program which provides the full range of clinical services associated with the treatment of cardiovascular disease including community outreach, emergency treatment of cardiovascular illnesses, non-invasive diagnostic imaging modalities, ~~diagnostic and therapeutic cardiac catheterization procedures~~ services, open heart surgery and cardiac rehabilitation services. Community outreach and cardiac rehabilitation services shall be provided by the applicant or through arrangements with other agencies and facilities located in the same city. All other components of a comprehensive cardiac services program shall be provided within a single facility.
- (11) "Diagnostic cardiac catheterization procedure" means a cardiac catheterization procedure performed ~~using cardiac catheterization or cardiac angioplasty equipment~~ for the purpose of detecting and identifying defects or diseases in the great coronary arteries or veins of the heart, or abnormalities in the heart structure, but not the pulmonary artery.
- (12) "Electrophysiology procedure" means a diagnostic or therapeutic procedure performed to study the electrical conduction activity of the heart and characterization of atrial ventricular arrhythmias.

- (13) "Existing" means the equipment was in operation prior to the beginning of the review period.
- (14) "High-risk patient" means a person with reduced life expectancy because of left main or multi-vessel coronary artery disease, often with impaired left ventricular function and with other characteristics as referenced in the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization and Cardiac Catheterization Laboratories (1991) report.
- (15) "Mobile equipment" means cardiac angioplasty equipment or cardiac catheterization equipment and transporting equipment which is moved to provide services at two or more host facilities.
- (16) "Percutaneous transluminal coronary angioplasty (PTCA)" is one type of therapeutic cardiac catheterization procedure used to treat coronary artery disease in which a balloon-tipped catheter is placed in the diseased artery and then inflated to compress the plaque blocking the artery.
- (17) "Primary cardiac catheterization service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, if the facility has a comprehensive cardiac services program; and not farther than 23 road miles from the facility if the facility performs only diagnostic cardiac catheterization procedures; except that the primary cardiac catheterization service area of an academic medical center teaching hospital designated in 10 NCAC 3R shall not be limited to 45 road miles.
- (18) "Therapeutic cardiac catheterization procedure" means a cardiac catheterization procedure performed for the purpose of treating or resolving certain anatomical or physiological conditions which have been determined to exist in the heart or great arteries or veins of the heart.
- (2) documentation of the applicant's experience in treating cardiovascular patients at the facility during the past 12 months, including:
 - (A) the number of patients receiving stress tests;
 - (B) the number of patients receiving intravenous thrombolytic therapies;
 - (C) the number of patients presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction; ~~and~~
 - (D) the number of patients referred to other facilities for cardiac catheterization procedures or open heart surgery procedures, by type of procedure; and
 - (E) the number of diagnostic and therapeutic cardiac catheterization procedures performed during the twelve month period reflected in the most recent licensure form on file with the Division of Facility Services;
- (3) the number of patients from the proposed cardiac catheterization service area who are projected to receive cardiac catheterization services by patient's county of residence in each of the first 12 quarters of operation, including the methodology and assumptions used for these projections;
- (4) the number of patients from the proposed primary cardiac catheterization service area who are projected to receive cardiac catheterization services by patients' county of residence in each of the first 12 quarters of operation, including the methodology and assumptions used for these projections;
- (5) documentation of the applicant's projected sources of patient referrals that are located in the proposed cardiac catheterization service area, including letters from the referral sources that demonstrate their intent to refer patients to the applicant for cardiac catheterization services;
- (6) evidence of the applicant's capability to communicate with emergency transportation agencies and with an established comprehensive cardiac services program;
- (7) the number and composition of cardiac catheterization teams available to the applicant;
- (8) documentation of the applicant's in-service training or continuing education programs for cardiac catheterization team members;
- (9) a written agreement with a comprehensive cardiac services program that specifies the arrangements for referral and transfer of patients seen by the applicant and that includes a process to alleviate the need for duplication in catheterization studies;
- (10) a written description of patient selection criteria including referral arrangements for high-risk patients;

Statutory Authority G.S. 131E-177(1); 131E-183.

.1614 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to acquire cardiac catheterization or cardiac angioplasty equipment shall use the acute care facility/medical equipment application form.

(b) The applicant shall provide the following additional information based on the population residing within the applicant's proposed cardiac catheterization service area:

- (1) the projected number of cardiac catheterization procedures, by CPT or ICD-9-CM codes, by classification of cardiac catheterization procedure, to be performed in each cardiac catheterization room for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used for these projections;

- (2) the number and composition of cardiac catheterization teams available to the applicant;
- (3) documentation of the applicant's in-service training or continuing education programs for cardiac catheterization team members;
- (4) a written agreement with a comprehensive cardiac services program that specifies the arrangements for referral and transfer of patients seen by the applicant and that includes a process to alleviate the need for duplication in catheterization studies;
- (5) a written description of patient selection criteria including referral arrangements for high-risk patients;

- (11) a copy of the contractual arrangements for the acquisition of the proposed cardiac catheterization equipment or cardiac angioplasty equipment, including itemization of the cost of the equipment; and
- (12) documentation that the cardiac catheterization equipment and cardiac angioplasty equipment and the procedures for operation of the equipment are designed and developed based on the American College of Cardiology/American Heart Association Guidelines for Cardiac Catheterization Laboratories (1991) report.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1615 REQUIRED PERFORMANCE STANDARDS

(a) The applicant shall demonstrate that the project is capable of meeting the following standards:

- (1) each proposed item of cardiac catheterization equipment or cardiac angioplasty equipment, including mobile equipment, shall be utilized at an annual rate of at least 60 percent of capacity, measured during the fourth quarter of the third year following completion of the project;
- (2) if the applicant proposes to perform therapeutic cardiac catheterization procedures, each of the applicant's therapeutic cardiac catheterization teams shall be performing at an annual rate of at least 100 therapeutic cardiac catheterization procedures, during the third year of operation following completion of the project;
- (3) at least 50 percent of the projected cardiac catheterization procedures shall be performed on patients residing within the primary cardiac catheterization service area;
- (4) each existing item of cardiac catheterization equipment and cardiac angioplasty equipment in each facility which has a primary cardiac catheterization service area that overlaps the proposed primary cardiac catheterization service area shall have been operated at a level of at least 80 percent of capacity during the 12 month period reflected in the most recent licensure form on file with the Division of Facility Services;
- (5) the utilization of each existing or approved item of cardiac catheterization equipment and cardiac angioplasty equipment in each facility which has a primary cardiac catheterization service area that overlaps the proposed primary cardiac catheterization service area shall not be expected to fall below 60 percent of capacity due to the acquisition of the proposed cardiac catheterization, cardiac angioplasty, or mobile equipment;
- (6) if the applicant proposes to perform diagnostic cardiac catheterization procedures, each diagnostic cardiac catheterization team shall be performing at an annual rate of at least ~~450~~ 200 diagnos-

tic-equivalent catheterization procedures by the end of the third year following completion of the project;

- (7) each item of existing mobile equipment operating in the proposed primary cardiac catheterization service area shall have been performing at least an average of four diagnostic-equivalent catheterization procedures per day per site in the proposed cardiac catheterization service area in the 12 month period preceding the submittal of the application; and
- (8) each item of existing or approved mobile equipment to be operating in the proposed primary cardiac catheterization service area shall be performing at least an average of four diagnostic-equivalent catheterization procedures per day per site in the proposed cardiac catheterization service area in the applicant's third year of operation.

(b) If the applicant proposes to perform cardiac catheterization procedures on patients ~~age 17~~ age 14 and under, the applicant shall demonstrate that it meets the following additional criteria:

- (1) the facility has the capability to perform diagnostic and therapeutic cardiac catheterization procedures and open heart surgery services on patients ~~age 17~~ age 14 and under;
- (2) the proposed project shall be performing at an annual rate of at least 100 cardiac catheterization procedures on patients ~~age 17~~ age 14 or under during the fourth quarter of the third year following initiation of the proposed cardiac catheterization service for patients ~~age 17~~ age 14 and under.

(c) An applicant shall provide documentation of all assumptions and data used in the development of the projections required in this Rule.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1618 DATA REPORTING REQUIREMENTS

~~The facility shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1619 ACCESSIBILITY

~~(a) The applicant shall provide documentation describing the mechanism that will be used to ensure that the projected number of medically underserved will be served in the facility.~~

~~(b) The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admission requirements for patients in each of the following payor categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self-pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

~~(e) The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the facility.~~

~~(d) The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .1700 - CRITERIA AND STANDARDS FOR OPEN-HEART SURGERY SERVICES AND HEART-LUNG BYPASS MACHINES

.1713 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Capacity" of an open heart surgery room means 400 adult-equivalent open heart surgical procedures per year. One open heart surgical procedure on persons age 5 14 and under is valued at two adult open heart surgical procedures. For purposes of determining capacity, one open heart surgical procedure is defined to be one visit or trip by a patient to the open heart surgery room for an open heart operation.
- (2) "Cardiac Surgical Intensive Care Unit" means a distinct intensive care unit as defined in 10 NCAC 3R .1213(2) and which is for exclusive use by post-surgical open heart patients.
- (3) "Heart-lung bypass machine" is shall have the same meaning as defined in G.S. 131E-176(10a).
- (4) "Open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 90 road miles from the facility, except that the open heart surgery service area of an academic medical center teaching hospital designated in 10 NCAC 3R .3050 shall not be limited to 90 road miles.
- (5) "Open heart surgery services" is shall have the same meaning as defined in G.S. 131E-176(18b).
- (6) "Open heart surgical procedures" means highly specialized surgical procedures which:

- (a) utilize a heart-lung bypass machine (the "pump") to perform extra-corporeal circulation and oxygenation during surgery;
- (b) are designed to correct congenital and acquired cardiac and coronary disease; and
- (c) are identified by Medicare Diagnostic Related Group ("DRG") numbers 104, 105, 106, 107, and 108.
- (7) "Open heart surgery room" means an operating room primarily used to perform open heart surgical procedures, as reported on the most current hospital licensure application.
- (8) "Open heart surgery program" means all of the open heart surgery rooms operated in one hospital.
- (9) "Primary open heart surgery service area" means a geographical area defined by the applicant, which has boundaries that are not farther than 45 road miles from the facility, except that the primary open heart surgery service area of an academic medical center teaching hospital designated to 10 NCAC 3R .3050 shall not be limited to 45 road miles.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1714 INFORMATION REQUIRED OF APPLICANT

(a) An applicant that proposes to add an open heart surgery room or to acquire a heart-lung bypass machine shall use the acute care facility/medical equipment application form.

(b) The applicant shall also provide the following additional information:

- (1) the projected number of open heart surgical procedures to be completed in each open heart surgery room and the projected number of open heart surgical procedures to be performed on each heart-lung bypass machine for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used to make these projections;
- (2) the projected number of cardiac catheterization procedures to be completed in the facility for each of the first 12 calendar quarters following completion of the proposed project, including the methodology and assumptions used for these projections;
- (3) the applicant's experience in treating cardiovascular patients at the facility during the past 12 months, including:
 - (A) the number of patients receiving stress tests;
 - (B) the number of patients receiving intravenous thrombolytic therapies;
 - (C) the number of patients presenting in the Emergency Room or admitted to the hospital with suspected or diagnosed acute myocardial infarction;

- (D) the number of cardiac catheterization procedures performed, by type of procedure;
- (E) the number of patients referred to other facilities for cardiac catheterization or open heart surgical procedures, by type of procedure;
- (F) the number of patients referred to the applicant's facility for cardiac catheterization or open heart surgical procedures, by type of procedure;
- (G) the number of open heart surgery procedures performed by type of procedure during the twelve month period reflected in the most recent licensure form on file with the Division of Facility Services;
- (4) the number of patients from the proposed open heart surgery service area who are projected to receive open heart surgical procedures by patient's county of residence in each of the first 12 quarters of operation including the methodology and assumptions used to make the projections;
- (5) the number of patients from the proposed primary open heart surgery service area who are projected to receive open heart surgical procedures by patient's county of residence in each of the first 12 quarters, including the methodology and assumptions used to make these projections;
- (6) the projected patient referral sources;
- (7) evidence of the applicant's capability to communicate efficiently with emergency transportation agencies and with all hospitals serving the proposed service area;
- (8) the number and composition of open heart surgical teams available to the applicant;
- (9) a brief description of the applicant's in-service training or continuing education programs for open heart surgical team members; and
- (10) evidence of the applicant's capability to perform both cardiac catheterization and open heart surgical procedures 24 hours per day, 7 days per week.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1719 DATA REPORTING REQUIREMENTS

~~The facility shall provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services;~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1720 ACCESSIBILITY

- ~~(a) The applicant shall provide documentation describing~~

~~the mechanism that shall be used to insure that the projected number of medically underserved shall be served in the facility.~~

~~(b) The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admission requirements for patients in each of the following payer categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

~~(c) The applicant shall provide a written description of the billing procedures, including the credit and collection policies that shall be utilized by the facility.~~

~~(d) The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .1900 - CRITERIA AND STANDARDS FOR RADIATION THERAPY EQUIPMENT

.1912 DEFINITIONS

These definitions shall apply to all rules in this Section:

- (1) "Approved linear accelerator" means a linear accelerator which was not operational prior to the beginning of the review period but which had been issued a certificate of need or had been acquired prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12.
- (2) "Complex Radiation treatment" is equal to 2 ESTVs and means: treatment on three or more sites on the body; use of special techniques such as tangential fields with wedges, rotational or arc techniques; or use of custom blocking.
- (3) "Equivalent Simple Treatment Visit (ESTV)" means one basic unit of radiation therapy which normally requires up to fifteen (15) minutes for the uncomplicated set-up and treatment of a patient on a modern megavoltage teletherapy unit including the time necessary for portal filming.
- (4) (2) "Existing linear accelerator" means a linear accelerator in operation prior to the beginning of the review period.
- (5) "Intermediate Radiation treatment" means treatment on two separate sites on the body, three or more fields to a single treatment site or use of multiple blocking and is equal to 2 ESTVs.
- (6) (3) "Linear accelerator" means MRT equipment

which is used to deliver a beam of electrons or photons in the treatment of cancer patients.

- (7) (4) "Linear accelerator service area" means a geographical area, defined by the applicant, in which a linear accelerator provides services and in which no less than 120,000 persons reside.
- (8) (5) "Megavoltage unit" means MRT equipment which provides a form of teletherapy that involves the delivery of energy greater than, or equivalent to, one million volts by the emission of x-rays, gamma rays, electrons, or other radiation.
- (9) (6) "Megavoltage radiation therapy (MRT)" means the use of ionizing radiation in excess of one million electron volts in the treatment of cancer.
- (10) (7) "MRT equipment" means a machine or energy source used to provide megavoltage radiation therapy including linear accelerators and other particle accelerators.
- (11) (8) "Radiation therapy equipment" means medical equipment which is used to provide radiation therapy services.
- (12) (9) "Radiation therapy services" means those services which involve the delivery of precisely controlled and monitored doses of radiation to a well defined volume of tumor bearing tissue within a patient. Radiation may be delivered to the tumor region by the use of radioactive implants or by beams of ionizing radiation or it may be delivered to the tumor region systemically.
- (13) (10) "Radiation therapy service area" means the geographic area in which radiation therapy services are proposed to be provided by the applicant.
- (14) "Simple Radiation treatment" means treatment on a single site on the body, single treatment field or parallel opposed fields with no more than simple blocks and is equal to 1 ESTV.
- (15) (11) "Simulator" means a machine that produces high quality diagnostic radiographs and that is capable of precisely reproducing reproduces the geometric relationships of the MRT equipment to the patient.
- (16) "Special technique" means radiation therapy treatments that may require increased time for each patient visit including:
 - (a) total body irradiation (photons or electrons) which equals 4.0 ESTVs;
 - (b) hemi-body irradiation which equals 2.0 ESTVs;
 - (c) intraoperative radiation therapy which equals 10.0 ESTVs;
 - (d) particle radiation therapy which equals 2.0 ESTVs;
 - (e) dynamic conformational radiation therapy with moving gantry, collimators or couch which equals 1.5 ESTVs;
 - (f) limb salvage irradiation at lengthened SSD which equals 2.0 ESTV;

- (g) additional field check radiographs which equals .05 ESTV; and
- (h) stereotactic radiosurgery which equals 6.0 ESTVs.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1913 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire radiation therapy equipment shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to acquire radiation therapy equipment shall also provide the following additional information:

- (1) a description of the boundaries of the proposed radiation therapy service area or the proposed linear accelerator service area if the applicant proposes to acquire a linear accelerator;
- (2) a list of the existing radiation therapy equipment in the proposed radiation therapy service area or linear accelerator service area;
- (3) a list of all the radiation therapy equipment to be acquired and documentation of the capabilities and capacities of each item of equipment;
- (4) documentation of the purchase price and fair market value of each piece of radiation therapy equipment, each simulator, and any other related equipment proposed to be acquired;
- (5) the projected number of patient treatments by simple, intermediate and complex treatments to be performed on each piece of radiation therapy equipment for each of the first eight calendar quarters following the completion of the proposed project and documentation of all assumptions by which utilization is projected;
- (6) documentation that the proposed radiation therapy equipment shall be operational at least seven hours per day, five days a week;
- (7) documentation that no more than one simulator is available for every two linear accelerators in the applicant's facility, except that an applicant that has only one linear accelerator may have one simulator; and simulator.
- (8) documentation that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies; and
- (9) the projected number of patients that will be treated for cure and the number of patients that will be treated for palliation on each linear accelerator on an annual basis.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1914 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to acquire a linear accelerator shall demonstrate that each of the following standards shall

be met:

- (1) each existing linear accelerator in the proposed service area served at least 250 patients or provided ~~6,400~~ 6,500 ESTV treatments in the twelve months prior to the date the application was submitted; ~~submitted, with the exception that existing linear accelerators that performed less than 6,400 treatments per year shall not be held to this standard if the applicant can provide documentation that:~~

(A) ~~the patient characteristics or tumor types treated by the existing linear accelerator are complex and require more treatment time per patient; and~~

(B) ~~the existing linear accelerator is committed to clinical research and teaching;~~

- (2) each proposed new linear accelerator shall be utilized at an annual rate of 250 patients or ~~6,400~~ 6,500 ESTV treatments during the third year of operation of the new equipment; and
- (3) each existing and approved linear accelerator shall be projected to be utilized at an annual rate of 250 patients or ~~6,400~~ 6,500 ESTV treatments during the third year of operation of the new equipment-

(b) A linear accelerator shall not be held to the standards in Paragraph (a) of this Rule if the applicant provides documentation that the linear accelerator has been or shall be used exclusively for clinical research and teaching.

(c) (b) An applicant proposing to acquire radiation therapy equipment other than a linear accelerator shall provide the following information:

- (1) the number of patients that are projected to receive treatment from the proposed radiation therapy equipment, classified by type of equipment, diagnosis, treatment procedure, and county of residence; and
- (2) the maximum number and type of procedures that the proposed equipment is capable of performing.

(d) (e)The applicant shall document all assumptions and provide data supporting the methodology used to determine projected utilization as required in this Rule.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1916 REQUIRED STAFFING AND STAFF TRAINING

(a) ~~An applicant proposing to acquire radiation therapy equipment shall document that:~~

- (1) ~~the appropriate types and numbers of staff, particularly qualified radiation therapists and medical staff, shall be available to support the proposed services; and~~
- (2) ~~a board-certified Radiation Oncologist licensed to practice medicine in North Carolina shall be available to perform radiation therapy proce-~~

~~dures and supervise all radiation therapy procedures.~~

(b) An applicant proposing to acquire radiation therapy equipment shall provide documentation to demonstrate document the number and availability of staff or provide evidence that obviates the need for the following staff in the following areas:

- (1) Radiation Oncologist;
- (2) Radiation Physicist;
- (3) Dosimetrist or Physics Assistant;
- (4) ~~Physics Technologist;~~
- (4) (5) Radiation Therapist;
- (5) (6) Radiation-Oncology Administrator;
- (6) (7) Registered Nurse or LPN;
- (7) (8) Physical Therapist;
- (8) (9) Dietician;
- (9) (10) Pharmacist;
- (10) (11) Social Worker; and
- (11) (12) Maintenance Engineer.

Statutory Authority G.S. 131E-177(1); 131E-183.

.1917 ACCESSIBILITY

(a) ~~The applicant shall document the mechanism that will be used to insure that the projected number of medically underserved will be served by the applicant.~~

(b) The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the proposed services and stating the admission requirements for patients in each of the following payor categories:

- (1) ~~Medicare;~~
- (2) ~~Medicaid;~~
- (3) ~~Blue Cross and Blue Shield;~~
- (4) ~~Commercial Insurance;~~
- (5) ~~State Employees Health Plan;~~
- (6) ~~Self Pay (includes self pay, indigent and charity care); and~~
- (7) ~~Other as identified by the applicant.~~

(c) The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the applicant.

(d) The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the applicant's referral mechanisms and admissions policies for the medically underserved.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.1918 DATA REPORTING REQUIREMENTS

The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:

- (1) demographic data on patients treated;

- (2) ~~financial data; and~~
- (3) ~~clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .2000 - CRITERIA AND STANDARDS FOR HOME HEALTH SERVICES

.2002 DEFINITIONS

The following definitions in this Rule ~~will~~ shall apply to all rules in this Section:

- (1) "Home Health Agency" ~~means an agency shall have the same meaning~~ as defined in G.S. 131E-176 (12).
- (2) "Home Health Services" ~~means services shall have the same meaning~~ as defined in G.S. 131E-176 (12).
- (3) ~~"Proposed Geographic Service Area" means:~~
 - (a) ~~Where the proponent has proposed to establish a home health agency to meet the need projected in the applicable State Medical Facilities Plan for a single county, the single county in which the home health agency will be established; or~~
 - (b) ~~Where the proponent has proposed to establish a home health agency to meet the need projected in the applicable State Medical Facilities Plan for a grouping of contiguous counties, those contiguous counties defined in the State Medical Facilities Plan in effect at the beginning of the review period for the application and in which the proponent will provide home health services.~~

Statutory Authority G.S. 131E-177(1); 131E-183.

.2004 CAPACITY IN THE AGENCY AND IN THE HEALTH SERVICE AREA

(a) ~~A proposal to provide new home health services must be consistent with the applicable North Carolina State Health Plan. Additionally, a proposal must show a relationship to the needs of the community in the proposed geographic service area and to the applicable health systems plan.~~

(b) ~~A proposal to provide new home health services must specify:~~

- (1) ~~the proposed geographic service area;~~
- (2) ~~the types of proposed service disciplines;~~
- (3) ~~the projected unduplicated patient count per service discipline for the first two years (project monthly for year one and year two);~~
- (4) ~~the projected number of visits per service discipline for the first two years (project monthly for year one and year two);~~
- (5) ~~the projected average annual cost per visit per service discipline; and~~
- (6) ~~any agreements or contractual arrangements between the proposed home health agency and other health and social services providers within the proposed geographic service area for coordi-~~

~~nation of services.~~

~~All assumptions, including the specific methodology by which patient utilization and cost are projected, must be clearly stated.~~

~~(c) A proposal to provide new home health services must document that the population of the proposed service area has a need for home health services, using the statewide methodology contained in the applicable North Carolina State Health Plan (State Medical Facilities Plan component).~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2005 SCOPE OF SERVICES OFFERED

~~A proponent proposing to develop new home health services must provide documentation to show that services will be offered in a manner consistent with rules adopted pursuant to G.S. 131E, Article 6, Part C and with the regulations for conditions of participation under Medicare and Medicaid.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2006 PROJECTED UTILIZATION

~~A proposal to provide new home health services must project an annual unduplicated patient caseload for the first year of operation which meets or exceeds the minimum need sufficient to justify the establishment of a new home health agency as shown in the State Medical Facilities Plan.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2007 SITE

~~A proposal to provide new home health services must provide documentation to show that the services will conform to the requirements of federal, state, and local regulatory bodies.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2008 STAFFING

~~A proposal to provide new home health services must provide documentation to show that services will be provided by qualified medical and nursing staff in a manner consistent with G.S. Chapter 131E, Article 6, Part C, and that medical and other necessary staff are available to provide the services required by the patient.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2012 INFORMATION REQUIRED OF APPLICANT

(a) An applicant shall identify:

- (1) the counties that are proposed to be served by the new office;
- (2) the proposed types of services to be provided, including a description of each discipline;
- (3) the projected total unduplicated patient count of the new office for each of the first two years of

- operation;
- (4) the projected number of patients to be served per service discipline for each of the first two years of operation;
 - (5) the projected number of visits by service discipline for each of the first two years of operation;
 - (6) within each service discipline, identify the average number of patient visits per day that are anticipated to be performed by each staff person;
 - (7) the projected average annual cost per visit for each service discipline;
 - (8) the projected charge by payor source for each service discipline;
 - (9) the names of the anticipated sources of referrals; and
 - (10) documentation of attempts made to establish working relationships with the sources of referrals.

All assumptions, including the specific methodology by which patient utilization and costs are projected, shall be clearly stated.

(b) An applicant shall specify the primary site and at least one alternate site on which the office is proposed to be located. The applicant shall provide documentation from the owner of the sites or a realtor that the primary and alternate site(s) are available for acquisition.

Statutory Authority G.S. 131E-177(1); 131E-183.

.2013 PERFORMANCE STANDARDS

An applicant shall project, in the third year of operation, an annual unduplicated patient caseload for the county in which the facility will be located that meets or exceeds the minimum need used in the applicable State Medical Facilities Plan to justify the establishment of a new home health agency office in that county.

Statutory Authority G.S. 131E-177(1); 131E-183.

.2014 STAFFING AND STAFF TRAINING

(a) An applicant shall demonstrate that proposed staffing for the home health agency office will meet the staffing requirements as contained in 10 NCAC 3L which is incorporated by reference including all subsequent amendments.

(b) An applicant shall provide copies of letters of interest, preliminary agreements, or executed contractual arrangements between the proposed home health agency office and each health care provider with which the home health agency office plans to contract for the provision of home health services in each of the counties proposed to be served by the new office.

Statutory Authority G.S. 131E-177(1); 131E-183.

SECTION .2100 - CRITERIA AND STANDARDS FOR AMBULATORY SURGICAL SERVICES

.2117 ACCESSIBILITY TO SERVICES

~~(a) An applicant proposing to establish a new ambulatory surgical facility, to increase the number of ambulatory surgical operating rooms in an existing ambulatory facility or hospital, to convert a specialty ambulatory surgical program to a multispecialty ambulatory surgical program or to add a specialty to a specialty ambulatory surgical program shall provide assurance that the facility, unless solely designated as a birthing center, will be certified for Medicaid and Medicare reimbursement upon completion of the project.~~

~~(b) The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.~~

~~(c) The applicant shall provide a copy of the written admissions policies identifying any prepayment or deposit requirements for the facility and clearly stating the admission requirements for the following payor categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

~~(d) The applicant shall provide a written description of the billing procedures, including the credit collection policies, that will be utilized by the facility.~~

~~(e) The applicant shall document that the members of the health care community in the ambulatory surgical service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

~~(f) The applicant shall provide documentation that the facility will match or exceed the average percent of patients in the combined categories of Medicare, Medicaid, charity care and bad debt provided by the existing and approved ambulatory surgical programs in the ambulatory surgical service area in which the applicant's facility is, or will be, located.~~

Statutory Authority G.S. 131E-177; 131E-183(b).

.2120 DATA REPORTING REQUIREMENTS

~~The facility shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .2300 - CRITERIA AND STANDARDS FOR COMPUTED TOMOGRAPHY EQUIPMENT

.2319 DATA REPORTING REQUIREMENTS

The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:

- (1) ~~demographic data on patients treated;~~
- (2) ~~financial data; and~~
- (3) ~~clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2320 ACCESSIBILITY

(a) ~~The applicant shall provide documentation describing the mechanism that will be used to ensure that the projected number of medically underserved will be served in the unit.~~

(b) ~~The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the unit and stating the admissions requirements for patients in each of the following payor categories:~~

- (1) ~~Medicare;~~
- (2) ~~Medicaid;~~
- (3) ~~Blue Cross and Blue Shield;~~
- (4) ~~Commercial Insurance;~~
- (5) ~~State Employees Health Plan;~~
- (6) ~~Self Pay (includes self pay, indigent and charity care); and~~
- (7) ~~Other as identified by the applicant.~~

(c) ~~The applicant shall provide a written description of the billing procedures, including the credit collection policies, that will be utilized by the unit.~~

(d) ~~The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the unit's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .2400 - CRITERIA AND STANDARDS FOR INTERMEDIATE CARE FACILITY MENTALLY RETARDED (ICF/MR)

.2402 DEFINITIONS

The definitions in this Rule will shall apply to all rules in this Section:

- (1) "Intermediate care facility for the mentally retarded (ICF/MR)" ~~or persons with related conditions (ICF/MR) services" means those services rendered in a facility or a part of a facility which is licensed and certified under state law with a~~

~~primary purpose to provide health or habilitative services based on the developmental model and the principles of normalization for mentally retarded persons or persons with related conditions, e.g., epilepsy, cerebral palsy, autism. Such facility provides services to a mentally retarded individual for whom requests for payment are made under a plan approved under Title XIX of the Social Security Act of 1965 (Medicaid) and for whom active treatment is being given. shall have the same meaning as defined in G.S. 131E-176(14a).~~

- (2) "Active treatment" means:
 - (a) regular participation in professionally developed and supervised activities, experiences, or therapies in accordance with an individual plan of care;
 - (b) an individual plan of care which is a written plan that is based on individual choice and setting sets forth measurable goals or behaviorally stated objectives and prescribing prescribes an integrated program of individually designed activities, experiences or therapies necessary to achieve such goals or objectives;
 - (c) an interdisciplinary professional evaluation consisting of complete medical, social, or psychological diagnosis and an evaluation of the individual's need for the facility's care, prior to admission but not to exceed three months before admission to the facility or, in the case of individuals who make application while in such facility, before requesting payment under the plan;
 - (d) re-evaluation medically, socially, and psychologically, at least annually by the staff involved in carrying out the resident's individual plan of care, including review of the individual's progress toward meeting the plan of care, assessment of continuing need for facility care, and consideration of alternate methods of care; and
 - (e) an individual plan (as part of the individual's total plan of care) developed prior to discharge that is based on individual choice by a qualified mental retardation developmental disabilities professional and other appropriate professionals, which includes the present residence, specifying the type of care and services that will be needed to enable the individual to function in a different environment and also includes provisions for protective supervision.
- (3) "Qualified Mental Retardation Developmental Disabilities Professional" means a staff person in an ICF/MR facility designated to be responsible for supervising the implementation of each resident's individual plan of care, integrating the various aspects of the facility's program, recording each resident's progress and initiating periodic review of each individual plan of care. A

Q.M.R.P. Qualified Developmental Disabilities Professional must shall meet the minimum qualifications for employment as defined in the 45 42 CFR 249 and 483 483.430 which is incorporated by reference including all subsequent amendments.

- (4) "Catchment area" means the geographic part of the State served by a specific area authority ("Area authority" means the Mental Health, ~~Mental Retardation~~ Developmental Disabilities, and Substance Abuse Authority.)

Statutory Authority G.S. 131E-177(1),(5); 131E-183.

.2404 CAPACITY IN THE FACILITY AND IN THE HEALTH SERVICE AREA

(a) ~~Proposals to provide ICF/MR services must be consistent with the applicable State Medical Facilities Plan.~~

(b) ~~A proposal to provide new or expanded ICF/MR services must specify the number of ICF/MR beds to be operated following the completion of the proposed project.~~

(c) ~~A proposal to provide expanded ICF/MR beds will not be approved unless the overall average occupancy, over the three months immediately preceding the submission of the proposal, of the total number of ICF/MR beds within the facility in which the new beds are to be operated was at least 90 percent.~~

(d) ~~A proposal to provide ICF/MR beds must comply with one of the following models:~~

(1) ~~small residential, six beds or less, ICF/MR community based freestanding facility, i.e., group home model; or~~

(2) ~~community based 15 beds or less, ICF/MR facility to be developed when there are insufficient community based resources or services available in the county or surrounding catchment area to adequately meet the needs of the population to be served.~~

(e) ~~There shall be no more than three residential facilities housing a combined total of 18 persons on contiguous pieces of property.~~

(f) ~~Notwithstanding Paragraph (e) of this Rule, those existing facilities which, prior to April 1, 1989, indicated in writing to the Agency an intention to operate an ICF/MR housing a total of no more than 30 persons on contiguous pieces of property shall be limited to operating on said contiguous property either 30 ICF/MR beds or that number of beds as indicated in writing to the Agency, whichever is less. The Agency shall determine if adequate documentation of written intention has been received by the Agency prior to April 1, 1989.~~

Statutory Authority G.S. 131E-177(1),(5); 131E-183(b).

.2405 SCOPE OF SERVICES OFFERED

(a) ~~A proposal to provide new or expanded ICF/MR services must be able to demonstrate that all current applica-~~

~~ble licensure standards will be met. Documentation must be presented to indicate that all services required by 45 CFR 249.13 will be available as needed.~~

(b) ~~The application must include a copy of the admission/discharge policies and specify the proposed working relationship with the Area Authority and its Interagency Council regarding admissions and discharges of persons in the program.~~

Statutory Authority G.S. 131E-177(1),(5); 131E-183(b).

.2406 PROJECT UTILIZATION/OCCUPANCY

(a) ~~A proposal to provide new or expanded ICF/MR services must project an occupancy level for the facility for the first eight calendar quarters following the completion of the proposed project. All assumptions, including the specific methodologies by which occupancies are projected, must be clearly stated.~~

(b) ~~A proposal to provide new or expanded ICF/MR services will not be approved unless occupancy is projected to be at least 90 percent for the total number of ICF/MR beds proposed to be operated, no later than one year following the completion of the proposed project. All assumptions including the specific methodologies by which occupancies are projected, must be clearly stated.~~

Statutory Authority G.S. 131E-177(1),(5); 131E-183(b).

.2407 PROJECTED RESIDENT ORIGIN

(a) ~~A proposal to provide new or expanded ICF/MR services must project resident origin by percentage by county of residence. All assumptions, including the specific methodology by which resident origin is projected must be clearly stated.~~

(b) ~~A proposal to provide new or expanded ICF/MR services must show that at least 80 percent of the anticipated resident population will be within 90 minutes automobile driving time (one way) from the facility with the exception that this standard may be waived for the following:~~

(1) ~~residents leaving state regional mental retardation centers and psychiatric hospitals and entering community ICF/MR facilities;~~

(2) ~~proposals to serve exclusively one of the following related conditions: autism, epilepsy, cerebral palsy.~~

Statutory Authority G.S. 131E-177(1),(5); 131E-183(b).

.2408 SITE: BUILDING AND EQUIPMENT

(a) ~~A proposal to provide new or expanded ICF/MR services must specify the site on which the services are to be operated. If such site is neither owned by nor under option to be bought by the proponent, the proponent must provide a written commitment to diligently pursue acquiring the site if and when health planning approvals are granted, must specify a secondary site on which the services could be operated should acquisition efforts relative to the primary~~

~~site ultimately fail, and must demonstrate that the primary and secondary sites are available for acquisition.~~

~~(b) A proposal to provide new or expanded ICF/MR services must clearly demonstrate that consideration has been given to the factors that may delay or prevent the development or offering of services on the proposed site.~~

~~(c) A proposal to provide new or expanded ICF/MR services must provide documentation to show that the services will be provided in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies.~~

~~(d) A proposal to provide new or expanded ICF/MR services must consider the site location in relation to the availability of developmental services outside the facility.~~

~~(e) A proposal to provide new or expanded ICF/MR services shall be located within 60 minutes automobile driving time (one way) of the residents' day program(s).~~

~~(f) A proposal for new or expanded ICF/MR services must have adequate provisions for individual space, and access to recreation areas and activities.~~

Statutory Authority G.S. 131E-177(1),(5); 131E-183(b).

.2409 STAFFING

~~(a) A proposal to provide new or expanded ICF/MR services must provide documentation to show that appropriate numbers and types of staff will be available to support the services. The ICF/MR must be administered by a qualified mental retardation professional.~~

~~(b) A proposal to provide new or expanded ICF/MR services must comply with all federal, state, and local laws and regulations applicable to the facility's personnel.~~

Statutory Authority G.S. 131E-177(1),(5); 131E-183(b).

.2410 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish new ICF/MR beds shall project an occupancy level for the entire facility for the first eight calendar quarters following the completion of the proposed project. The application shall contain all assumptions and the methodology for projecting occupancy.

(b) An applicant proposing to establish new ICF/MR beds shall project resident origin by percentage by county of residence.

(c) An applicant proposing to establish new ICF/MR shall specify the primary site on which the facility will be located. If such site is neither owned by nor under option by the applicant, the applicant shall provide a written commitment to diligently pursue acquiring the site if and when a certificate of need application is approved, shall specify at least one alternate site on which the facility could be located should acquisition efforts relative to the primary site ultimately fail, and shall demonstrate that the primary site and alternate sites are available for acquisition.

(d) An applicant proposing to establish new ICF/MR beds shall document that the services will be provided in a physical environment that conforms with the requirements

in 10 NCAC 14K and 10 NCAC 14M or 10 NCAC 14O.

(e) An applicant proposing to establish new ICF/MR beds shall document that the existing or proposed facility is located within 45 minutes normal automobile driving time (one-way) of the resident's developmental day programs.

(f) An applicant proposing to establish new ICF/MR beds shall document that provisions for recreation areas and activities are appropriate to the developmental level of the proposed residents.

(g) The applicant shall identify the Area Authority that will serve as the Single Portal of Entry/Exit for the facility.

Statutory Authority G.S. 131E-177(1),(5); 131E-183.

.2411 PERFORMANCE STANDARDS

(a) An applicant proposing to add ICF/MR beds to an existing facility shall not be approved unless the overall average occupancy, over the six months immediately preceding the submittal of the application, of the total number of ICF/MR beds within the facility in which the new beds are to be operated was at least 90 percent.

(b) An applicant proposing to establish new ICF/MR beds shall not be approved unless occupancy is projected to be at least 90 percent for the total number of ICF/MR beds proposed to be operated in the entire facility, no later than one year following the completion of the proposed project.

(c) An applicant proposing to establish new ICF/MR beds shall comply with one of the following models:

(1) a residential community based freestanding facility with six beds or less, i.e., group home model; or

(2) a community-based facility with 7 to 15 beds if documentation is provided that a facility of this size is necessary because adequate residential community based freestanding facilities are not available in the catchment area to meet the needs of the population to be served.

(d) No more than three intermediate care facilities for the mentally retarded housing a combined total of 18 persons shall be developed on contiguous pieces of property.

Statutory Authority G.S. 131E-177(1),(5); 131E-183.

.2412 STAFFING AND STAFF TRAINING

(a) An application for new ICF/MR beds shall document that the staffing pattern for the ICF/MR will comply with staffing requirements as contained in 10 NCAC 14K and 14M or 14O and 42 CFR 483.430 which are incorporated by reference including all subsequent amendments.

(b) An application for new ICF/MR beds shall document that the ICF/MR will be administered by a qualified developmental disabilities professional.

Statutory Authority G.S. 131E-177(1),(5); 131E-183.

SECTION .2500 - CRITERIA AND STANDARDS FOR SUBSTANCE ABUSE/CHEMICAL

DEPENDENCY TREATMENT BEDS

.2502 DEFINITIONS

The definitions in this Rule will shall apply to all rules in this Section:

- (1) "Substance abuse/chemical Chemical dependency treatment beds" means beds in:
 - (a) ~~a unit within a general hospital or an attached or freestanding unit of a general hospital licensed under G.S. Chapter 131E, Article 5;~~
 - (b) ~~a unit within a psychiatric hospital or an attached or freestanding unit of a psychiatric hospital licensed under G.S. Chapter 122, Article 1A; or~~
 - (c) ~~a freestanding facility specializing in chemical dependency licensed under G.S. Chapter 122, Article 1A; which are engaged in providing 24 hour a day treatment for the disease of chemical dependency, including administration of a therapeutic regimen designed for the treatment of chemically dependent persons, or related services; shall have the same meaning as defined in G.S. 131E-176(5b).~~
- (2) "Detoxification beds" means substance abuse/chemical dependency treatment beds which that are engaged used during that the period of time in which when the patient is being physically withdrawn withdrawing from chemical psychoactive substances under medical direction, in order that he may be able to participate in rehabilitative activities.
- (3) "Intensive treatment beds" means substance abuse/chemical dependency treatment beds which that are used in providing a highly structured rehabilitative treatment program after the physical withdrawal process not detoxification beds.
- (4) "Service Area" means the geographical area from which the proponent draws or proposes to draw its clients. Health service areas, as defined in the chemical dependency section of the State Medical Facilities Plan, are the basis for bed need projections for chemical dependency treatment beds.
- (5) "Clinical staff members" means any the employees employees of a substance abuse/chemical dependency treatment program who provides treatment or rehabilitation services to a patient. This includes, but is not limited to, physicians licensed to practice medicine in North Carolina, psychologists licensed to practice in North Carolina and alcohol, drug, or substance abuse counselors certified by the North Carolina Substance Abuse Professionals Certification Board.
- (6) "Aftercare plan" means a component of a treatment plan which provides continued contact with the patient after completion of the structured treatment process in order to maintain or improve on the patient's recovery process.

Statutory Authority G.S. 131E-177(1); 131E-183.

.2503 CAPACITY IN THE FACILITY

- (a) ~~A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must specify the total number of substance abuse/chemical dependency treatment beds to be operated upon the completion of the proposed project, as well as a breakdown of the number of beds to be used for detoxification and the number to be used for intensive treatment.~~
- (b) ~~A proposal to provide expanded substance abuse/chemical dependency treatment beds must demonstrate that the overall average occupancy in that chemical dependency treatment facility or unit has been at least 85 percent for the six months immediately preceding the submission of the proposal. The proponent must present evidence that the facility or unit will achieve and maintain operation at an occupancy rate of at least 85 percent within 36 months following completion of the project.~~
- (c) ~~A proposal for a new facility or unit to provide substance abuse/chemical dependency treatment beds must present evidence that the facility or unit will achieve and maintain operation at an average occupancy rate of at least 85 percent within 36 months of operation.~~
- (d) ~~A proposal for intensive treatment beds within a new substance abuse/chemical dependency treatment facility or unit must contain a minimum of 12 intensive treatment beds. A proposal for detoxification beds within a new substance abuse/chemical dependency treatment facility or unit has no minimum number of detoxification beds.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2504 CAPACITY IN THE SERVICE AREA AND NEED FOR SERVICES

- (a) ~~A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must identify the existing or proposed service area and target population by county of residence and by percent of chemical dependency treatment services to be provided to each county in the service area.~~
- (b) ~~A proposal to provide a new or expanded substance abuse/chemical dependency treatment facility or unit must identify the capacity and average annual occupancy level of all other such beds in the appropriate service area to show that the proposed services will not unnecessarily duplicate existing substance abuse/chemical dependency treatment programs within the appropriate service area.~~
- (c) ~~The methodology used in the State Medical Facilities Plan will be used to determine whether a need exists for additional chemical dependency treatment beds in the appropriate service area.~~
- (d) ~~Proposals for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must be consistent with the applicable North Carolina State Medical Facilities Plan. Additionally, proposals must show their relationship to the needs of the community in the~~

~~proposed service area and to the applicable health systems plan which may be obtained from the applicable health systems agency.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2505 SCOPE OF SERVICES OFFERED

~~(a) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit shall provide a detailed program description and shall document the availability of the following:~~

- ~~(1) admission procedures, including procedure for accepting emergency admissions;~~
- ~~(2) client evaluation procedures, including preliminary evaluation and establishment of an individual treatment plan;~~
- ~~(3) treatment procedures and services that are consistent with accepted standards of treatment for substance abuse/chemical dependency treatment;~~
- ~~(4) procedures for referral and follow up of clients to necessary outside services;~~
- ~~(5) procedures for involvement of family in counseling process;~~
- ~~(6) provision of an aftercare plan; and~~
- ~~(7) quality assurance/utilization review plan.~~

~~(b) A proposal to establish or expand a substance abuse/chemical dependency treatment facility shall describe and document the facility's existing or proposed relationship to other substance abuse/chemical dependency treatment programs in the appropriate service area, including referral relationships.~~

~~(c) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit shall show that written letters of intent or written agreements for any services to be provided on a contractual basis with the Division of Mental Health, Mental Retardation, and Substance Abuse Services or by other service agencies or individuals have been made, contingent upon issuance of a certificate of need.~~

~~(d) A proposal for detoxification beds in a new or expanded facility or unit must:~~

- ~~(1) be an internal component of an existing or proposed program for treatment of chemical dependency after detoxification; or~~
- ~~(2) document that a referral arrangement will exist with a program for treatment of chemical dependency after detoxification.~~

~~(e) Substance abuse/chemical dependency treatment beds included in proposals for a new or expanded unit in a hospital licensed under G.S. Chapter 131E, Article 5 or in a facility licensed under G.S. Chapter 122, Article 1A must be located in a designated unit which is programmatically distinct from other services.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2506 STAFFING

~~(a) A proposal for an expanded substance abuse/chemical dependency treatment facility or unit must document that clinical staff members are:~~

- ~~(1) currently licensed or certified by the appropriate state licensure or certification boards; or~~
- ~~(2) supervised by staff who are licensed or certified by the appropriate state licensure or certification boards; or~~
- ~~(3) supervised by staff who are graduates of a college or university with a baccalaureate or advanced degree in a human service related field and who have documentation of at least two years of supervised experience in the profession of alcoholism or drug abuse counseling.~~

~~(b) A proposal for an expanded substance abuse/chemical dependency treatment facility or unit must document that the staffing pattern, including the utilization of physicians licensed to practice medicine in North Carolina, meets the appropriate state licensing rules governing chemical dependency treatment facilities.~~

~~(c) A proposal for a new substance abuse/chemical dependency treatment facility or unit must document that when operation begins, the criteria in Paragraphs (a) and (b) of this Rule will be met.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2507 ACCESSIBILITY

~~(a) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit shall include the admissions policy for the facility or unit. The admissions policy will specify its applicability to persons who are:~~

- ~~(1) medically indigent;~~
- ~~(2) medicaid beneficiaries;~~
- ~~(3) medicare beneficiaries;~~
- ~~(4) recidivists;~~
- ~~(5) uninsured patients;~~
- ~~(6) clients referred by the local area mental health, mental retardation and substance abuse program; and~~
- ~~(7) involuntary admissions.~~

~~(b) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must specify the site for the services with justification for the location in consideration of the site's proximity to the proposed target population, support services, and to public transportation, if any, in the facility's proposed service area.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2508 CAPITAL: OPERATING AND SERVICE COSTS

~~(a) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit shall identify all capital and operating costs associated with the~~

~~proposed services. It shall be demonstrated that the proposed project is financially feasible, i.e., that the proposed facility has sufficient resources to undertake the project without eroding the financial position of the facility.~~

~~(b) A proposal for beds in a new substance abuse/chemical dependency treatment facility or unit must provide a three year projected of annual average cost and charges for services per patient day and per patient admission. A proposal for beds in an expanded facility or unit must show the impact on existing costs and charges per patient day and per patient admission for the first three years of the beds' operation.~~

~~(c) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must provide a comparison of comparable charges with other existing services in the service area.~~

~~(d) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must project the sources and mix of funds, i.e., percent of medicaid, medicare, private pay, federal, state, and local funds, as well as provisions made for the care of the indigent.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2509 QUALITY OF SERVICES

~~(a) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must meet the appropriate state licensing rules governing chemical dependency treatment facilities.~~

~~(b) A proposal for beds in a new or expanded substance abuse/chemical dependency treatment facility or unit must have policies and procedures to evaluate the quality and effectiveness of the program on at least an annual basis.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2510 INFORMATION REQUIRED OF APPLICANT

~~(a) An applicant proposing to establish new intensive treatment beds or detoxification beds shall project resident origin by percentage by county of residence. All assumptions and the methodology for projecting occupancy shall be clearly stated.~~

~~(b) An applicant proposing to establish new intensive treatment beds or detoxification beds shall project an occupancy level for the entire facility for the first eight calendar quarters following the completion of the proposed project, including the average length of stay. All assumptions and the methodology for projecting occupancy shall be clearly stated.~~

~~(c) If the applicant is an existing chemical dependency treatment facility, the applicant shall document the percentage of patients discharged from the facility that are readmitted to the facility at a later date.~~

~~(d) An applicant shall document that the following items are currently available or will be made available following completion of the project:~~

- ~~(1) admission criteria for clinical admissions to the facility or unit, including procedure for accepting emergency admissions;~~
- ~~(2) client evaluation procedures, including preliminary evaluation and establishment of an individual treatment plan;~~
- ~~(3) procedures for referral and follow-up of clients to necessary outside services;~~
- ~~(4) procedures for involvement of family in counseling process;~~
- ~~(5) provision of an aftercare plan; and~~
- ~~(6) quality assurance/utilization review plan.~~

~~(e) An applicant proposing to establish new detoxification beds shall identify the location of each referral source for follow-up outpatient, residential and rehabilitation services located in the proposed service area for clients who have completed detoxification.~~

~~(f) An applicant shall document the attempts made to establish working relationships with the health care providers and others that are anticipated to refer clients to the proposed intensive treatment and detoxification beds.~~

~~(g) An applicant shall provide copies of any current or proposed contracts or agreements or letters of intent to develop contracts or agreements for the provision of any services to the clients served in the chemical dependency treatment facility.~~

~~(h) An applicant shall identify the Area Authority that will serve as the Single Portal of Entry/Exit for the facility.~~

~~(i) An applicant shall document the provisions that will be made to obtain services for patients with a dual diagnosis of chemical dependency and psychiatric problems.~~

~~(j) An applicant proposing to establish new intensive treatment beds or detoxification beds shall specify the primary site on which the facility will be located. If such site is neither owned by nor under option by the applicant, the applicant shall provide a written commitment to diligently pursue acquiring the site if and when a certificate of need application is approved, shall specify at least one alternate site on which the facility could be located should acquisition efforts relative to the primary site ultimately fail, and shall demonstrate that the primary site and alternate sites are available for acquisition.~~

~~(k) An applicant proposing to establish new intensive treatment beds or detoxification beds shall document that the services will be provided in a physical environment that conforms with the requirements in 10 NCAC 14K and 10 NCAC 14N which are incorporated by reference including all subsequent amendments.~~

Statutory Authority G.S. 131E-177(1); 131E-183.

.2511 PERFORMANCE STANDARDS

~~(a) An applicant shall not be approved unless the overall occupancy, over the nine months immediately preceding the submittal of the application, of the total number of intensive treatment beds and detoxification beds within the facility in which the beds are to be located has been:~~

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds;
or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

(b) An applicant shall not be approved unless the overall occupancy of the total number of intensive treatment beds and detoxification beds to be operated in the facility is projected, by the fourth quarter of the third year of operation following completion of the project, to be:

- (1) 75 percent for facilities with a total of 1-15 intensive treatment beds and detoxification beds;
or
- (2) 85 percent for facilities with a total of 16 or more intensive treatment beds and detoxification beds.

(c) The applicant shall document the specific methodology and assumptions by which occupancies are projected, including the average length of stay and anticipated recidivism rate.

Statutory Authority G.S. 131E-177(1); 131E-183.

.2512 STAFFING AND STAFF TRAINING

(a) An applicant proposing to establish new intensive treatment beds or detoxification beds shall document that clinical staff members will be:

- (1) currently licensed or certified by the appropriate state licensure or certification boards; or
- (2) supervised by staff who are licensed or certified by the appropriate state licensure or certification boards.

(b) An applicant proposing to establish new intensive treatment beds or detoxification beds shall document that the staffing pattern in the facility is consistent with the staffing requirements contained in 10 NCAC 14K and 10 NCAC 14N which are incorporated by reference including all subsequent amendments.

Statutory Authority G.S. 131E-177(1); 131E-183.

SECTION .2600 - CRITERIA AND STANDARDS FOR PSYCHIATRIC BEDS

.2603 CAPACITY IN THE FACILITY AND SERVICE AREA

(a) ~~A proposal to provide new or expanded psychiatric beds must specify the number of psychiatric beds to be operated following the completion of the proposed project.~~

(b) ~~An existing facility proposing to provide additional psychiatric beds will not be approved unless the overall occupancy, over the six months immediately preceding the submission of the proposal, of the total number of psychiatric beds within the facility in which the beds are to be operated met the target occupancies cited in the applicable State Medical Facilities Plan: 1-49 beds, 70 percent; 50-99~~

~~beds, 75 percent; 100-249 beds, 80.5 percent; 250-399 beds, 83 percent; and 400+ beds, 85 percent.~~

(c) ~~A proposal to provide new psychiatric beds must present evidence by estimating the projected caseload that the facility or unit of a hospital will operate at the target occupancies cited in the State Medical Facilities Plan: 1-49 beds, 70 percent; 50-99 beds, 75 percent; 100-249 beds, 80.5 percent; 250-399 beds, 83 percent; and 400+ beds, 85 percent.~~

(d) ~~A proposal to provide new psychiatric beds, either as a new unit of a general hospital licensed under G.S. Chapter 131E-77, Article 5 or a psychiatric hospital licensed under G.S. 122C-23, Article 2, must propose that the unit or facility will have a minimum of ten beds.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2605 SCOPE OF SERVICES OFFERED

(a) ~~A proposal to provide new or expanded psychiatric beds must document the extent to which the following will be available. If any item will not be available, then substantive information must be given obviating the need for that item before approval for a new or expanded service can be considered:~~

- (1) ~~comprehensive services which shall include individual, group and family therapy; medication therapy; and activities therapy, including recreation;~~
- (2) ~~emergency screening services for the targeted population which shall include services for handling emergencies on a 24-hour basis either in-house or through formalized transfer agreements;~~
- (3) ~~educational components if the proposal is for child or adolescent beds;~~
- (4) ~~an aftercare plan.~~

(b) ~~A proposal to provide new or expanded psychiatric beds shall provide assurances that the facility has a credentialing procedure by which to review its staff.~~

(c) ~~A proposal to provide psychiatric beds in a hospital licensed under G.S. 131E-77, Article 5 shall be located in a separate and designated unit of the hospital.~~

(d) ~~A proposal to provide psychiatric beds in a hospital licensed under G.S. 122C-23, Article 2 must document that psychiatric treatment will be provided in a separate and designated unit from alcohol and drug treatment if such is provided.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2607 ACCESSIBILITY

~~A proposal to provide new or expanded psychiatric beds must specify the site for the services with justification for the location in consideration of the site's proximity to the target population and to public transportation, if any, in the facility's proposed service area.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2608 RELATIONSHIP TO THE EXISTING SERVICE NETWORK

(a) ~~A proposal to provide new or expanded psychiatric beds must describe the facility's relationship with existing community psychiatric service providers in the service area.~~

(b) ~~A proposal to provide new or expanded psychiatric beds must demonstrate that agreements for patient services which will be provided on a contractual basis can be obtained.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2609 CAPITAL: OPERATING: AND SERVICE COSTS

(a) ~~A proposal to provide new or expanded psychiatric beds must identify all capital and operating costs associated with the proposed services. The proponent must demonstrate that its proposal is cost effective and will accomplish the objectives and goals that the proposed project is intended to satisfy.~~

(b) ~~A proposal to provide new or expanded psychiatric beds must provide a projected average cost per admission, including ancillary charges and other professional fees. Separate projections for child and adolescent, adult, or geriatric shall be provided for each of these populations, as appropriate.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2610 QUALITY OF SERVICES

(a) ~~A proposal to provide new or expanded psychiatric beds must include data on the historical readmission rates of the proponent, if available.~~

(b) ~~A proposal to provide new or expanded psychiatric beds must have written policies and procedures for the protection of the patients' rights and confidentiality, as well as patient grievance procedures and visiting privileges and policies.~~

(c) ~~A proposal to provide new or expanded psychiatric beds must have policies and procedures to evaluate the quality and effectiveness of the program on at least an annual basis.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2612 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish new psychiatric beds shall project resident origin by percentage by county of residence. All assumptions and the methodology for projecting occupancy shall be clearly stated.

(b) An applicant proposing to establish new psychiatric beds shall project an occupancy level for the entire facility for the first eight calendar quarters following the completion of the proposed project, including average length of stay. All assumptions and the methodology for projecting occu-

pancy shall be clearly stated.

(c) The applicant shall provide documentation of the percentage of patients discharged from the facility that are readmitted to the facility at a later date.

(d) An applicant proposing to establish new psychiatric beds shall describe the general treatment plan that is anticipated to be used by the facility and the support services to be provided, including provisions that will be made to obtain services for patients with a dual diagnosis of psychiatric and chemical dependency problems.

(e) The applicant shall document the attempts made to establish working relationships with the health care providers and others that are anticipated to refer clients to the proposed psychiatric beds.

(f) The applicant shall provide copies of any current or proposed contracts or agreements or letters of intent to develop contracts or agreements for the provision of any services to the clients served in the psychiatric facility.

(g) The application shall identify the Area Authority that will serve as the Single Portal of Entry/Exit for the facility.

(h) The applicant shall document that the following items are currently available or will be made available following completion of the project:

- (1) admission criteria for clinical admissions to the facility or unit;
- (2) emergency screening services for the targeted population which shall include services for handling emergencies on a 24-hour basis or through formalized transfer agreements;
- (3) client evaluation procedures, including preliminary evaluation and establishment of an individual treatment plan;
- (4) procedures for referral and follow-up of clients to necessary outside services;
- (5) procedures for involvement of family in counseling process;
- (6) comprehensive services which shall include individual, group and family therapy; medication therapy; and activities therapy including recreation;
- (7) educational components if the application is for child or adolescent beds;
- (8) provision of an aftercare plan; and
- (9) quality assurance/utilization review plan.

(i) An applicant proposing to establish new psychiatric beds shall specify the primary site on which the facility will be located. If such site is neither owned by nor under option by the applicant, the applicant shall provide a written commitment to diligently pursue acquiring the site if and when a certificate of need application is approved, shall specify at least one alternate site on which the facility could be located should acquisition efforts relative to the primary site ultimately fail, and shall demonstrate that the primary site and alternate sites are available for acquisition.

(j) An applicant proposing to establish new psychiatric beds shall provide documentation to show that the services will be provided in a physical environment that conforms

with the requirements in 10 NCAC 14K and 10 NCAC 14L.

Statutory Authority G.S. 131E-177(1); 131E-183.

.2613 PERFORMANCE STANDARDS

(a) An applicant proposing to add psychiatric beds in an existing facility shall not be approved unless the average occupancy over the six months immediately preceding the submittal of the application of the total number of licensed psychiatric beds within the facility in which the beds are to be operated was at least 75 percent.

(b) An applicant proposing to establish new psychiatric beds shall not be approved unless occupancy is projected to be 75% for the total number of licensed psychiatric beds proposed to be operated in the facility no later than the fourth quarter of the second operating year following completion of the project.

Statutory Authority G.S. 131E-177(1); 131E-183.

SECTION .2700 - CRITERIA AND STANDARDS FOR MAGNETIC REASONANCE IMAGING SCANNER

.2718 ACCESSIBILITY

~~(a) An applicant that proposes to acquire a magnetic resonance imaging scanner, including a mobile MRI scanner, shall provide documentation describing the mechanism that will be used to ensure that the projected number of medically underserved will be served in the facility.~~

~~(b) The applicant shall provide written admissions policies identifying any prepayment or deposit requirements which states the admissions requirements for the following payer categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

~~(c) The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the facility.~~

~~(d) The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.2719 DATA REPORTING REQUIREMENTS

The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data

~~and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .2800 - CRITERIA AND STANDARDS FOR REHABILITATION SERVICES

.2802 INFORMATION REQUIRED OF APPLICANT

~~(a) A proposal~~ An applicant proposing to establish new or expanded rehabilitation beds must shall specify the total number of rehabilitation beds in the facility or unit to be operated following completion of the proposed project.

~~(b) A proposal~~ An applicant proposing to establish new or expanded rehabilitation beds shall demonstrate that:

- (1) The target population for the new or expanded program is specifically defined;
- (2) Arrangements and responsibilities for administration and medical direction are clearly specified;
- (3) A plan exists that describes how clinical personnel (e.g., rehabilitative nurses and therapists) and ancillary services will be allocated among other health service facilities or units if personnel or services for the rehabilitation beds will be shared with other units or facilities; and
- (4) Referral and transfer agreements exist or shall be arranged for between the proposed rehabilitation program or unit and all units within the program, the facility in which the proposed rehabilitation program or unit will be situated, and the agencies that are involved in the provision of rehabilitation or related support services and are located in the proposed service area; area.
- ~~(5) A program plan for participation in research and educational programs for rehabilitation exists; and~~
- ~~(6) The program provides or establishes arrangements for post inpatient rehabilitation services and follow up, including outpatient rehabilitation services.~~

(c) An applicant proposing to establish new rehabilitation beds shall document the proximity of the proposed facility or unit to the following services:

- (1) support services;
- (2) ancillary services;
- (3) public transportation;
- (4) outpatient rehabilitation clinics;
- (5) home health agencies;
- (6) group homes for disabled persons.

(d) An applicant proposing to add rehabilitation beds to an existing facility shall show the current rehabilitation

patient origin by percentage by county of residence for the 12 month period immediately preceding the submittal of the application. All assumptions, including the specific methodology by which patient origin is projected shall be clearly stated.

(e) An applicant proposing to establish new rehabilitation beds shall project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected shall be clearly stated.

(f) An applicant proposing to establish new rehabilitation beds shall project the average length of stay (ALOS) for each for the following categories of patients:

- (1) spinal cord;
- (2) traumatic brain injury;
- (3) stroke; and
- (4) pediatric.

(g) An applicant proposing to establish new rehabilitation beds shall project an occupancy level for all rehabilitation beds in the facility for each of the first eight calendar quarters following completion of the proposed project. The applicant shall clearly document all assumptions, including the specific methodologies by which occupancies are projected.

Statutory Authority G.S. 131E-177; 131E-183.

.2803 PROJECTED UTILIZATION/OCCUPANCY

(a) A proposal to establish new or expanded rehabilitation beds must project an occupancy level for all rehabilitation beds in the facility by specialty area [e.g., traumatic brain injury (TBI), stroke, spinal cord injury and pediatrics] and average length of stay (ALOS) for each of the first eight calendar quarters following completion of the proposed project. The applicant must clearly document all assumptions, including the specific methodologies by which occupancies are projected.

(b) A proposal to establish new or expanded rehabilitation beds shall not be approved unless occupancy is projected, based on reasonable assumptions and methodologies, to be 80 percent for between 0 and 49 rehabilitation beds proposed to be operated and 85 percent for greater than 49 rehabilitation beds proposed to be operated, no later than two years following completion of the proposed project. For an applicant proposing to expand existing rehabilitation beds, occupancy must be projected based on the facility's total rehabilitation bed capacity including the total number of proposed new rehabilitation beds, the total number of licensed rehabilitation beds and the total number of previously approved rehabilitation beds that were not licensed at the time the application was submitted. The applicant must clearly document all assumptions, including the specific methodologies by which occupancies are projected.

Statutory Authority G.S. 131E-177; 131E-183(b).

.2804 PROJECTED PATIENT ORIGIN

(a) A proposal to establish new or expanded rehabilitation beds must project patient origin by percentage by county of residence. All assumptions, including the specific methodology by which patient origin is projected must be clearly stated.

(b) A proposal to add rehabilitation beds to an existing facility must show the current patient origin by percentage by county of residence for the 12 month period immediately preceding the submittal of the proposal. All assumptions, including the specific methodology by which patient origin is projected must be clearly stated.

Statutory Authority G.S. 131E-177; 131E-183(b).

.2805 SITE, BUILDING AND EQUIPMENT

(a) A proposal to establish new or expanded rehabilitation beds must demonstrate that the services will be offered in a physical environment that conforms to the requirements of federal, state and local regulatory bodies.

(b) A proposal to provide new or expanded rehabilitation beds must demonstrate that consideration has been given to the factors that may delay or prevent the development or offering of services on the proposed site and according to the proposed timetable.

(c) A proposal to establish new or expanded rehabilitation beds to serve children 14 years of age or younger shall describe how the facility will provide for the separation of children from adult patients.

Statutory Authority G.S. 131E-177; 131E-183(b).

.2806 REQUIRED STAFFING AND STAFF TRAINING

(a) A proposal An applicant proposing to establish a new or expanded rehabilitation facility beds must shall identify which of the following rehabilitation services shall be provided in the facility upon licensure and operation of the new or expanded rehabilitation beds:

- (1) Program Manager;
- (2) Occupational Therapy;
- (3) Physical Therapy;
- (4) Physiatrist or a physician who has training and experience in providing rehabilitation care;
- (5) Psychology;
- (6) Rehabilitation Nursing;
- (7) Respiratory Therapy;
- (8) Social Work;
- (9) Speech-Language Pathology and Audiology;
- (10) Vocational Rehabilitation;
- (11) Orthotics;
- (12) Prosthetics.

(b) A proposal to establish a new or expanded rehabilitation facility shall identify and justify the number of rehabilitation personnel who are projected to have direct contact with the disabled person in the provision of each of the services enumerated in this Rule.

(c) The applicant shall document the availability and

~~proximity of medical, rehabilitation, ancillary and support staff to the proposed new or expanded rehabilitation program.~~

Statutory Authority G.S. 131E-177; 131E-183.

.2807 ACCESSIBILITY OF SERVICES

(a) ~~A proposal to establish new or expanded rehabilitation beds shall provide assurance that the facility will be certified for participation in the Title XIX (Medicaid) and Title XVIII (Medicare) programs upon completion of the project and shall serve Medicare and Medicaid recipients.~~

(b) ~~The applicant shall describe the mechanism that will be used to insure that the projected number of medically underserved patients will be served by the facility.~~

(c) ~~The applicant shall provide a copy of the written admissions policies identifying any prepayment or deposit requirements for the facility and clearly stating the admissions requirements for the following payor categories:~~

- ~~(1) private pay;~~
- ~~(2) medicaid beneficiaries;~~
- ~~(3) medicare beneficiaries;~~
- ~~(4) uninsured indigent patients;~~
- ~~(5) underinsured indigent patients; and~~
- ~~(6) fully insured patients.~~

(d) ~~The applicant shall provide a written description of the billing procedures, including the credit collection policies, that will be utilized by the facility.~~

Statutory Authority G.S. 131E-177; 131E-183(b).

.2809 RELATIONSHIP TO THE EXISTING SERVICE NETWORK

(a) ~~A proposal to establish a new or expanded rehabilitation program shall include written policies and procedures which demonstrate that the facility has or will have patient referral, transfer and follow up procedures.~~

(b) ~~The applicant shall document the proximity of the proposed facility or unit to the following services:~~

- ~~(1) support services;~~
- ~~(2) ancillary services;~~
- ~~(3) public transportation;~~
- ~~(4) outpatient rehabilitation clinics;~~
- ~~(5) home health agencies;~~
- ~~(6) group homes for disabled persons; and~~
- ~~(7) other special care units or services.~~

(c) ~~A proposal to provide new or expanded rehabilitation services must provide documentation that agencies involved with the provision of rehabilitation or related support services which are located in a county from which the applicant proposes it will admit ten percent or more of the facility's total number of patients have been invited to comment on the proposal, particularly with regard to the proposed target population, the referral and admission policies for medically underserved groups and arrangements for coordination of services with the existing health care system.~~

Statutory Authority G.S. 131E-177; 131E-183(b).

.2810 PERFORMANCE STANDARDS

(a) An applicant proposing to establish new rehabilitation beds shall not be approved unless the average occupancy, over the nine months immediately preceding the submittal of the application, of the total number of licensed rehabilitation beds within the facility in which the new beds are to be operated was at least 80 percent.

(b) An applicant proposing to establish new rehabilitation beds shall not be approved unless occupancy is projected to be 80 percent for the total number of rehabilitation beds to be operated in the facility no later than two years following completion of the proposed project.

Statutory Authority G.S. 131E-177; 131E-183.

SECTION .3100 - CRITERIA AND STANDARDS FOR MAJOR MEDICAL EQUIPMENT

.3103 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to acquire new major medical technology or major medical equipment shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant shall define a proposed service area for the major medical equipment or new major medical technology which shall be similar to the applicant's existing service area for other health services, unless the applicant documents that other providers outside of the applicant's existing service area are expected to refer patients to the applicant.

(c) An applicant shall document its current experience in providing care to the patients to be served by the proposed major medical equipment or new major medical technology.

(d) ~~An applicant shall document the estimated productive life of the specific equipment and whether any improvements can be expected during its productive life that would reduce its capital cost, operating cost, or increase its productivity.~~

(d) (e) An applicant shall document that the proposed new major medical technology or major medical equipment, its supplies, and its pharmaceuticals have been approved by the U.S. Food and Drug Administration for the clinical uses stated in the application, or that the equipment shall be operated under protocols of an institutional review board whose membership is consistent with the U. S. Department of Health and Human Services' regulations.

(e) (f) An applicant proposing to acquire new major medical equipment or new major medical technology shall provide a floor plan of the facility in which the equipment will be operated that identifies the following areas:

- (1) receiving/registering area;
- (2) waiting area;
- (3) pre-procedure area;
- (4) procedure area or rooms;
- (5) post-procedure areas, including observation areas; and
- (6) administrative and support areas.

(f) (g) An applicant proposing to acquire major medical equipment or new major medical technology shall document that the facility shall meet or exceed the appropriate building codes and federal, state, and local manufacturer's standards for the type of major medical equipment to be installed.

Statutory Authority G.S. 131E-177(1); 131E-183.

.3107 ACCESSIBILITY

(a) ~~The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served by the major medical equipment.~~

(b) ~~The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the major medical equipment and stating the admission requirements for patients in each of the following payor categories:~~

- (1) ~~Medicare;~~
- (2) ~~Medicaid;~~
- (3) ~~Blue Cross and Blue Shield;~~
- (4) ~~Commercial Insurance;~~
- (5) ~~State Employees Health Plan;~~
- (6) ~~Self Pay (includes self pay, indigent and charity care); and~~
- (7) ~~Other as identified by the applicant.~~

(c) ~~The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the major medical equipment.~~

(d) ~~The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3108 DATA REPORTING REQUIREMENTS

~~The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- (1) ~~demographic data on patients treated;~~
- (2) ~~financial data; and~~
- (3) ~~clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3200 - CRITERIA AND STANDARDS FOR LITHOTRIPTOR EQUIPMENT

.3204 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to acquire a lithotripter shall document the availability of the following services:

- (1) ~~an active radiology services~~ Radiology services

and an ~~established existing referral~~ urological practice that will refer patients; and the availability and accessibility of acute inpatient services for patients who experience complications.

(b) An applicant proposing to acquire a mobile lithotripter shall provide referral agreements between each host site facility and at least one other provider of lithotripter services in the proposed lithotripter service area to document the availability of lithotripter services if patients require them when the mobile lithotripter is not in service at that host facility.

Statutory Authority G.S. 131E-177(1); 131E-183.

.3206 DATA REPORTING REQUIREMENTS

~~The applicant offering lithotripter services shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- (1) ~~demographic data on patients treated;~~
- (2) ~~financial data; and~~
- (3) ~~clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3207 ACCESSIBILITY

(a) ~~The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.~~

(b) ~~The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admission requirements for patients in each of the following payor categories:~~

- (1) ~~Medicare;~~
- (2) ~~Medicaid;~~
- (3) ~~Blue Cross and Blue Shield;~~
- (4) ~~Commercial Insurance;~~
- (5) ~~State Employees Health Plan;~~
- (6) ~~Self Pay (includes self pay, indigent and charity care); and~~
- (7) ~~Other as identified by the applicant.~~

(c) ~~The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the facility.~~

(d) ~~The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3300 - CRITERIA AND STANDARDS

FOR AIR AMBULANCE

.3306 DATA REPORTING REQUIREMENTS

~~The applicant shall provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients transported;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3400 - CRITERIA AND STANDARDS FOR BURN INTENSIVE CARE SERVICES

.3401 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved burn intensive care unit" means a burn intensive care unit which was not operational prior to the beginning of the review period but which had been issued a certificate of need or had been acquired developed prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12.
- (2) "Burn care technician" means:
 - (a) a licensed practical nurse;
 - (b) an operating room technician;
 - (c) an operating room corpsman; or
 - (d) a high school graduate with basic nurse aide training who has received special education or experience in burn treatment care.
- (3) "Burn intensive care services" as defined in G.S. 131E-176(2b).
- (4) "Burn intensive care service area" means a geographic area defined by the applicant from which the patients to be admitted to the unit will originate.
- (5) "Burn intensive care unit" means a designated area within a hospital dedicated to the provision of burn intensive care services to severely burned patients.
- (6) "Burn specialist" means a registered nurse who possesses experience in general nursing and experience in or knowledge of intensive nursing care and burn treatment care.
- (7) "Existing burn intensive care unit" means a burn intensive care unit in operation prior to the beginning of the review period.
- (8) "Severely burned patient" means a patient that has burns covering more than 20 percent of the body area or that has burns which require intensive treatment, such as, but not limited to: inhalation injuries; chemical and electrical burns; burns with complications; such as fractures; burns to the face;

full thickness burns to the hands and feet; burns on patients whose pre-burned health was known to be poor, such as patients with diabetes or heart disease; and; burns on patients who are under 5 and over 60 years of age.

Statutory Authority G.S. 131E-177(1); 131E-183.

.3406 DATA REPORTING REQUIREMENTS

~~The applicant shall provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3407 ACCESSIBILITY

~~(a) The applicant shall provide documentation describing the mechanism that shall be used to ensure that the projected number of medically underserved shall be served in the unit.~~

~~(b) The applicant shall provide a copy of the written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admissions requirements for the following payor categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

~~(e) The applicant shall provide a written description of the billing procedures, including the credit collection policies, that shall be utilized by the facility.~~

~~(d) The applicant shall document that the members of the health care community in the "burn intensive care" service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3500 - CRITERIA AND STANDARDS FOR ONCOLOGY TREATMENT CENTERS

.3502 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a new oncology treatment center shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant shall also submit the following additional

information:

- (1) documentation of the number of existing oncology treatment centers and other health service facilities which provide similar services in the proposed oncology treatment center's service area;
- (2) a list of the medical/surgical specialties in the existing oncology treatment centers and other health service facilities which provide similar services in the proposed oncology treatment center service area, such as Radiation-Oncology, Medicine-Oncology, and surgical specialties;
- (3) a list of the medical equipment that is proposed to be acquired;
- (4) documentation verifying the actual cost or market value of each item of medical equipment, whichever is greater;
- (5) documentation that the proposed services shall result in an integrated multidisciplinary effort to diagnose and treat patients' clinical and psychosocial needs;
- (6) a list of all oncology diagnostic, oncology evaluation, and oncology treatment services that shall be available, and documentation demonstrating the means by which these services shall be provided;
- (7) documentation that coordination and referral agreements exist with a hospital, referring physicians, and surgical and medical specialists and subspecialists; and
- (8) documentation that the services shall be offered in a physical environment that conforms to the requirements of federal, state, and local regulatory bodies.

(c) An applicant proposing to acquire radiation therapy equipment shall document compliance with 10 NCAC 3R .1900, Criteria and Standards for Radiation Therapy Equipment.

(d) An applicant proposing to develop a new oncology treatment center shall provide:

- (1) the number of patients that are projected to use the service, by diagnosis;
- (2) the number of patients that are projected to use the service, by county of residence;
- (3) documentation of the maximum number of procedures that the equipment in the facility is capable of performing and the assumptions used to determine the maximum number of procedures;
- (4) quarterly projected utilization of the applicant's new equipment for each of the first three years after the completion of the project;
- (5) documentation of the effect the new oncology treatment center may have on existing oncology treatment centers and other health service facilities which provide similar services in the proposed oncology treatment center service area;

and

- (6) all the assumptions and data supporting the methodology used to make the above projections.

Statutory Authority G.S. 131E-177(1); 131E-183.

.3503 NEED FOR SERVICES

~~An applicant proposing to develop an oncology treatment center shall provide the following information:~~

- ~~(1) the number of patients that are projected to use the service, classified by diagnosis and by county of residence;~~
- ~~(2) documentation of the maximum number of procedures that the equipment in the facility is capable of performing;~~
- ~~(3) quarterly projected utilization of the applicant's new equipment for each of the first three years after the completion of the project;~~
- ~~(4) documentation of the effect the new oncology treatment center may have on existing oncology treatment centers and other health service facilities which provide similar services in the proposed oncology treatment center service area; and~~
- ~~(5) all the assumptions and data supporting the methodology used for the projections.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3506 DATA REPORTING REQUIREMENTS

~~The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3507 ACCESSIBILITY

~~(a) The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.~~

~~(b) The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admission requirements for patients in each of the following payer categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self pay, indigent and charity care); and~~

(7) ~~Other as identified by the applicant.~~

(e) ~~The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the facility.~~

(d) ~~The applicant shall document that the members of the health care community in the service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3600 - CRITERIA AND STANDARDS FOR GAMMA KNIFE

.3606 ACCESSIBILITY

(a) ~~An applicant that proposes to acquire a gamma knife shall provide documentation describing the mechanism that will be used to assure that the projected number of medically underserved will be served by the applicant.~~

(b) ~~The applicant shall provide written admissions policies identifying any prepayment or deposit requirements which state the admissions requirements for patients in each of the following payor categories:~~

- (1) ~~Medicare;~~
- (2) ~~Medicaid;~~
- (3) ~~Blue Cross and Blue Shield;~~
- (4) ~~Commercial Insurance;~~
- (5) ~~State Employees Health Plan;~~
- (6) ~~Self Pay (includes self pay, indigent and charity care); and~~
- (7) ~~Other as identified by the applicant.~~

(e) ~~The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the applicant.~~

(d) ~~The applicant shall document that the members of the health care community in the gamma knife service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the applicant's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3607 DATA REPORTING REQUIREMENTS

~~The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- (1) ~~demographic data on patients treated;~~
- (2) ~~financial data; and~~
- (3) ~~clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3700 - CRITERIA AND STANDARDS FOR POSITRON EMISSION TOMOGRAPHY SCANNER

.3706 DATA REPORTING REQUIREMENTS

~~An applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- (1) ~~demographic data on patients treated;~~
- (2) ~~financial data; and~~
- (3) ~~clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3707 ACCESSIBILITY

(a) ~~An applicant shall provide documentation describing the mechanism that will be used to ensure that the projected number of medically underserved will be served in the facility.~~

(b) ~~An applicant shall provide written admissions policies identifying any prepayment or deposit requirements and stating the admission requirements for patients in each of the following payor categories:~~

- (1) ~~Medicare;~~
- (2) ~~Medicaid;~~
- (3) ~~Blue Cross and Blue Shield;~~
- (4) ~~Commercial Insurance;~~
- (5) ~~State Employees Health Plan;~~
- (6) ~~Self Pay (includes self pay, indigent and charity care); and~~
- (7) ~~Other as identified by the applicant.~~

(e) ~~An applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the applicant.~~

(d) ~~An applicant shall document that the members of the health care community in the PET scanner service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the applicant's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3800 - CRITERIA AND STANDARDS FOR BONE MARROW TRANSPLANTATION

.3806 DATA REPORTING REQUIREMENTS

~~(a) An applicant shall agree to report the results of all transplants to an appropriate transplant registry [e.g. International Bone Marrow Transplant Registry (IBMTR) for allogeneic transplants and the North American Autologous Bone Marrow Transplant Registry (NAABMTR) for autologous transplants].~~

~~(b) An applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3807 ACCESSIBILITY

~~(a) An applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.~~

~~(b) An applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admission requirements for patients in each of the following payor categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self-pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

~~(c) An applicant shall provide a written description of the billing procedures, including the credit and collection policies, that will be utilized by the facility.~~

~~(d) An applicant shall document that the members of the health care community in the bone marrow transplantation service area, including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .3900 - CRITERIA AND STANDARDS FOR DIAGNOSTIC CENTERS

.3902 DEFINITIONS

The following definitions shall apply to all rules in this Section:

- (1) "Approved diagnostic center" means a diagnostic center that was not operational prior to the beginning of the review period but that had been issued a certificate of need or had been acquired developed prior to March 18, 1993 in accordance with 1993 N.C. Sess. Laws c. 7, s. 12.
- (2) "Diagnostic center" is shall have the same meaning as defined in G.S. 131E-176(7a).
- (3) "Diagnostic center service area", ~~unless otherwise defined by the State Medical Facilities Plan,~~

~~means the geographic area, as defined by the applicant, for which the proposed diagnostic center will provide services.~~

- (4) "Diagnostic procedure" means a discrete diagnostic procedure with a distinct CPT code or ICD-9-CM procedure code performed on one patient during one visit to a diagnostic suite.
- (5) "Diagnostic suite" means a single room or group of rooms in a diagnostic center which is used for the purpose of conducting diagnostic procedures.
- (6) "Essential" means those items which are indispensable, the absence of which renders the equipment useless.
- (7) "Existing diagnostic center" means a diagnostic center in operation prior to the beginning of the review period.
- (8) "Freestanding diagnostic center" means a diagnostic center that is not operated as a part of another health service facility but rather as a discrete business entity. A freestanding diagnostic center may be owned by another health service facility and may be located on the campus of another health service facility.
- (9) "Medical diagnostic equipment" means a single piece of diagnostic equipment or a single component of a multi-component diagnostic system which costs ten thousand dollars (\$10,000) or more, or whose fair market value is ten thousand dollars (\$10,000) or more.
- (10) "Mobile medical diagnostic equipment" means medical diagnostic equipment and transporting equipment which is moved to provide services at two or more host facilities.
- (11) "Mobile diagnostic program" means the provision of diagnostic services using mobile medical diagnostic equipment and transporting equipment at two or more host facilities.
- (12) "Radiologic technologist or X-Ray technician" means a person who, under the supervision of a physician radiologist, operates radiologic equipment and assists radiologists and other health professionals, and whose competence has been tested and approved by the American Registry of Radiologic Technologists.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3903 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new diagnostic center or to expand an existing diagnostic center shall use the Acute Care Facility/Medical Equipment application form.

(b) ~~The~~ An applicant shall also provide the following additional information:

- (1) the number, type, cost, condition, useful life and depreciation schedule of all medical diagnostic equipment that either is proposed to be acquired

or is currently owned or operated by the applicant, and will be part of the diagnostic center following completion of the project;

- (2) other than the equipment listed in Subparagraph (b)(1) of this Rule, a list of all equipment and related components which are necessary to perform the proposed procedures and services;
- (3) the maximum number of procedures that each piece of medical diagnostic equipment in the diagnostic center is capable of performing and the assumptions used to project capacity;
- (4) a list of all existing and approved health service facilities that operate or existing and have been approved to operate medical diagnostic equipment and diagnostic suites by type and location in the proposed medical diagnostic equipment service area;
- (5) the hours of operation of the proposed diagnostic center and each proposed diagnostic service;
- (6) the patient origin by percentage by county of residence for each diagnostic service provided by the applicant in the 12 month period immediately preceding the submittal of the proposal; application;
- (7) the projected patient origin by percentage by county of residence for each service proposed, and all the assumptions and data supporting the methodology used for the projections;
- (8) drawings or schematics of the proposed diagnostic center that identifies a distinct, identifiable area for each of the proposed services; and
- (9) a three year capital budget.

(c) An applicant proposing to establish a new mobile diagnostic program shall also provide the following information:

- (1) the number, type and cost of all proposed mobile medical diagnostic equipment including the cost of the transporting equipment;
- (2) other than the equipment listed in Subparagraph (b)(1) of this Rule, a list of all equipment and related components which are necessary to perform the proposed procedures and services;
- (3) the number and type of all existing and approved mobile diagnostic equipment in the proposed mobile diagnostic center service area;
- (4) the maximum number of procedures that each proposed piece of medical diagnostic equipment is capable of performing and the assumptions used to project capacity;
- (5) the name, address and hours of service at each host facility that is proposed to be served by the mobile diagnostic program; and
- (6) copies of letters of intent from, and proposed contracts with, all of the proposed host facilities of the mobile diagnostic program.

~~(d) An applicant proposing to establish a new or to expand an existing diagnostic center shall identify which of~~

~~the following services will be available:~~

- ~~(1) computerized tomography (CT) services;~~
- ~~(2) fluoroscopy services;~~
- ~~(3) laboratory services;~~
- ~~(4) mammography screening;~~
- ~~(5) magnetic resonance imaging (MRI);~~
- ~~(6) nuclear medicine;~~
- ~~(7) positron emission tomography (PET);~~
- ~~(8) diagnostic radiology;~~
- ~~(9) diagnostic ultrasound imaging; and~~
- ~~(10) other diagnostic services.~~

~~(e) An applicant proposing to establish a new or to expand an existing diagnostic center shall demonstrate that the diagnostic services will be offered in a physical environment that conforms to the requirements of federal, state and local regulatory bodies.~~

(d) (f) An applicant shall demonstrate that all equipment, supplies and pharmaceuticals proposed for the diagnostic center have been certified for clinical use by the U.S. Food and Drug Administration or will be operated or used under an institutional review board whose membership is consistent with U.S. Department of Health and Human Services' regulations.

(e) An applicant proposing to establish a new diagnostic center or to expand an existing diagnostic center shall provide:

- (1) the projected number of patients to be served, classified by diagnosis for each of the first twelve calendar quarters following completion of the project; and
- (2) the projected number of patients to be served by county of residence for each of the first twelve calendar quarters following completion of the project; and
- (3) the projected number and type of diagnostic procedures proposed to be provided by CPT code or ICD-9-CM procedure code for each of the first twelve calendar quarters following completion of the project.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3904 NEED FOR FACILITY

~~An applicant proposing to establish a new diagnostic center or to expand an existing diagnostic center shall provide:~~

- ~~(1) the projected number of patients to be served, classified by diagnosis and by county of residence for each of the first twelve calendar quarters following completion of the project;~~
- ~~(2) the projected number and type of diagnostic procedures proposed to be provided by CPT code or ICD-9-CM procedure code for each of the first twelve calendar quarters following completion of the project;~~
- ~~(3) documentation that all existing health service facilities providing similar medical diagnostic~~

equipment and services as proposed in the CON application in the defined diagnostic center service area were operating at 80% of the maximum number of procedures that the equipment is capable of performing for the twelve month period immediately preceding the submittal of the application;

- (4) documentation that all existing and approved medical diagnostic equipment and services of the type proposed in the CON application are projected to be utilized at 80% of the maximum number of procedures that the equipment is capable of performing by the fourth quarter of the third year of operation after initiation of diagnostic services;
- (5) documentation that the applicant's utilization projections are based on the experience of the provider and on epidemiological studies; and
- (6) all the assumptions and data supporting the methodologies used for the projections in this Rule.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3907 DATA REPORTING REQUIREMENTS

The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with the data format and reporting requirements formulated by the Division of Facility Services:

- (1) demographic data on patients receiving services;
- (2) financial data; and
- (3) clinical data.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3908 ACCESSIBILITY

(a) The applicant shall provide documentation describing the mechanism that will be used to insure that the projected number of medically underserved will be served in the facility.

(b) The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admission requirements for the patients in each of the following payer categories:

- (1) Medicare;
- (2) Medicaid;
- (3) Blue Cross and Blue Shield;
- (4) Commercial Insurance;
- (5) State Employees Health Plan;
- (6) Self Pay (includes self pay, indigent and charity care); and
- (7) Other as identified by the applicant.

(c) The applicant shall provide a written description of the billing procedures, including the credit and collection policies that will be utilized by the facility.

(d) The applicant shall document that the members of the health care community in the diagnostic center service area,

including existing current providers of diagnostic services, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.3909 PERFORMANCE STANDARDS

An applicant proposing to establish a new diagnostic center or to expand an existing diagnostic center shall provide:

- (1) documentation that all existing health service facilities providing similar medical diagnostic equipment and services as proposed in the CON application in the defined diagnostic center service area were operating at 80% of the maximum number of procedures that the equipment is capable of performing for the twelve month period immediately preceding the submittal of the application;
- (2) documentation that all existing and approved medical diagnostic equipment and services of the type proposed in the CON application are projected to be utilized at 80% of the maximum number of procedures that the equipment is capable of performing by the fourth quarter of the third year of operation following initiation of diagnostic services;
- (3) documentation that the applicant's utilization projections are based on the experience of the provider and on epidemiological studies; and
- (4) all the assumptions and data supporting the methodologies used for the projections in this Rule.

Statutory Authority G.S. 131E-177(1); 131E-183.

SECTION .4000 - CRITERIA AND STANDARDS FOR SOLID ORGAN TRANSPLANTATION SERVICES

.4002 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to establish a new solid organ transplantation service or to expand an existing solid organ transplantation service shall use the Acute Care Facility/Medical Equipment application form.

(b) An applicant proposing to establish a new solid organ transplantation service or to expand an existing solid organ transplantation service shall demonstrate that it is an academic medical center teaching hospital with accredited residencies or fellowships related to solid organ transplantation, including but not limited to: general surgery, thoracic surgery, and internal medicine.

(b) (e) The applicant shall provide a copy of its procedures for selecting transplant candidates and for distributing organs which are consistent with UNOS guidelines.

(c) (d) The applicant shall provide letters of agreement or contracts with either an independent organ procurement

organization or a hospital-based organ procurement organization. The letters shall demonstrate the capability to provide sufficient numbers of organs to support the minimum activity level for the applicable type of organ transplantation proposed in the application.

(d) (e) The applicant shall document collaboration with experts in the fields of hepatology, cardiology, pediatrics, infectious disease, nephrology, renal dialysis, pulmonary medicine, respiratory therapy, pathology, immunology, anesthesiology, physical therapy, and rehabilitation. The documentation shall include, but not be limited to, a plan of operation detailing the interaction of the transplant service and the stated specialty areas.

(e) (f) An applicant that proposes to establish a joint sharing arrangement for organ transplantation services which involves more than one hospital shall demonstrate all of the following:

- (1) all hospitals in the joint sharing arrangement are geographically proximate to permit cost-effective sharing of resources; and
- (2) a single hospital site has been designated where the organ transplant surgical procedures ~~will~~ shall be performed which involves both adult and pediatric organ transplant procedures, except one hospital site may be designated where all adult organ transplant procedures will be performed and another hospital site may be designated where all pediatric organ transplant procedures will be performed if both hospital sites are part of the joint sharing arrangement.

(f) (g) The applicant shall demonstrate that transplantation services ~~will~~ shall be offered in a physical environment that conforms to the requirements of federal, state and local bodies.

(g) (h) An applicant proposing to establish a new solid organ transplantation service or to expand an existing solid organ transplantation service shall include drawings or schematics of the proposed project that identify the location of the operating rooms in the hospital where transplantation procedures will be performed.

(h) (i) An applicant proposing to establish a new solid organ transplantation service or to expand an existing solid organ transplantation service shall project the number and type of transplantations by CPT code or ICD-9-CM procedure code by distinct transplantation service for each of the first twelve calendar quarters following completion of the proposed project.

(i) (j) An applicant proposing to establish a new solid organ transplantation service or to expand an existing solid organ transplantation service shall project patient origin by state and by county for North Carolina residents and shall indicate the percentage of total patients to originate from each State and county.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4003 REQUIRED SUPPORT SERVICES

An applicant proposing to establish a new or to expand an existing solid organ transplantation service shall demonstrate that it offers ~~all of the following items: the services listed in this Rule or shall provide documentation obviating the need for an item:~~

- (1) operating and recovery room resources;
- (2) intensive care facilities allowing reverse isolation;
- (3) microbiology and virology laboratory;
- (4) laboratory facilities for histocompatibility testing that are certified by the American Society for Histocompatibility and Immunogenetics;
- (5) a multidisciplinary plan for providing rehabilitation;
- (6) CT scanning;
- (7) nuclear medicine;
- (8) magnetic resonance imaging;
- (9) duplex ultrasound scanning for liver, pancreas and kidney transplantation;
- (10) pulmonary medicine;
- (11) cardiology;
- (12) an acute hemodialysis unit;
- (13) a state certified social worker with a master's degree in social work who is available for inpatient and outpatient ongoing support of both the patient and family;
- (14) a licensed practicing psychologist or licensed psychological associate who is available for inpatient and outpatient ongoing support of both the patient and family;
- (15) a psychiatrist who is available for inpatient and outpatient ongoing support of both the patient and family;
- (16) full-time organ transplant coordinator(s);
- (17) an on-going program of community-based post-transplantation care;
- (18) basic and clinical laboratory research;
- (19) ~~an active, formal~~ existing research program that is currently conducting research related to the proposed organ transplantation service;
- (20) ~~an established~~ a written organ donation protocol, with brain death protocol, consistent with North Carolina law; ~~and~~
- (21) ~~an established~~ existing program to promote organ donation at the applicant's ~~hospital~~ hospital; ~~and~~
- (22) a nursing team trained in immunosuppression management including isolation techniques and infection control methods.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4004 ADDITIONAL REQUIREMENTS FOR HEART, HEART/LUNG OR LUNG TRANSPLANTATION SERVICES

~~(a) An applicant proposing to establish a new heart or heart/lung transplantation service shall document that no more than two heart or heart/lung transplantation services shall be located in the same solid organ transplantation~~

~~service area following completion of the project.~~

(a) ~~(b)~~An applicant ~~that proposes~~ proposing to establish a new heart or heart/lung transplantation service shall project a cumulative minimum of 15 heart or heart/lung transplantation procedures by the end of the second full year of operation following the date on which the first heart or heart/lung transplant procedure is performed.

(b) ~~(c)~~An applicant proposing to establish a new heart or heart/lung transplantation service or to expand an existing heart or heart/lung transplantation service shall demonstrate that it offers ~~all of the following the services listed in this Rule or shall provide documentation obviating the need for an item:~~

- (1) a histocompatibility laboratory, or a written agreement with such a laboratory;
- (2) anatomic and clinical pathology with an approved residency program;
- (3) 24-hour angiography;
- (4) an intensive care unit with 24-hour per day resident coverage;
- (5) a continuously available coagulation laboratory;
- (6) a blood bank capable of providing 20 units of blood, platelets, and fresh blood products on demand; and
- (7) availability of cardiopulmonary bypass on a 24 hour basis.

~~(d) An applicant proposing to establish a new lung transplantation service shall document that no more than two lung transplantation services shall be located in the same solid organ transplantation service area following completion of the project.~~

(c) ~~(e)~~An applicant that proposes to establish a new lung transplantation service shall project a cumulative minimum of 15 lung transplantation procedures by the end of the second full year of operation following the date on which the first lung transplantation procedure is performed.

(d) ~~(f)~~An applicant proposing to establish a new lung transplantation service shall demonstrate that it offers ~~all of the following the services listed in this Rule or shall provide documentation obviating the need for an item:~~

- (1) a histocompatibility laboratory, or a written agreement with such a laboratory;
- (2) anatomic and clinical pathology with an approved residency program;
- (3) 24-hour angiography;
- (4) an intensive care unit with 24-hour per day resident coverage;
- (5) a continuously available coagulation laboratory;
- (6) a blood bank capable of providing 20 units of blood, platelets, and fresh blood products on demand; and
- (7) availability of cardiopulmonary bypass on a 24-hour basis.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4005 ADDITIONAL REQUIREMENTS FOR LIVER

TRANSPLANTATION SERVICES

~~(a) An applicant proposing to establish a new liver transplantation service or to expand an existing liver transplantation service shall document that no more than 2 liver transplantation services shall be located in the same solid organ transplantation service area following completion of the project.~~

(a) ~~(b)~~An applicant proposing to establish a new liver transplantation service shall project a cumulative minimum of 15 liver transplantation procedures by the end of the second full year of operation following the date on which the first liver transplant procedure is performed.

(b) ~~(c)~~An applicant proposing to establish a new liver transplantation service or to expand an existing liver transplantation service shall demonstrate that it either:

- (1) operates an existing renal transplant service; or
- (2) has a written agreement with a renal transplant service that ensures that the professional expertise of the renal transplant service is readily available to the proposed liver transplantation service.

~~(c) (d)An applicant proposing to establish a new liver transplantation service or to expand an existing liver transplantation service shall demonstrate that it offers all of the following items: the services listed in this Rule or shall provide documentation obviating the need for an item:~~

- (1) a histocompatibility laboratory, or a written agreement with such a laboratory;
- (2) anatomic and clinical pathology with an approved residency program;
- (3) 24-hour angiography;
- (4) an intensive care unit with 24-hour per day resident coverage;
- (5) veno-venous bypass equipment that does not require heparin;
- (6) adult and pediatric (as appropriate) gastroenterologists and hepatologists on the active medical staff who meet UNOS criteria for transplant physicians and surgeons;
- (7) endoscopic retrograde cholangiopancreatography (ERCP) availability;
- (8) percutaneous cholangiogram availability;
- (9) a rapid blood infusion system;
- (10) percutaneous liver biopsy capability;
- (11) hemoperfusion;
- (12) a rapid red blood cell (RBC) saver system; and
- (13) duplex ultrasound.

(d) ~~(e)~~The applicant shall establish and maintain all of the following:

- (1) nuclear HID biliary scan availability;
- (2) continuously available coagulation laboratory; and
- (3) a blood bank system capable of providing 200 units of blood or packed cells, 100 units of plasma on demand, 24 units (or four adult doses) of platelet concentrates and 30 units of cryoprecipitate on demand.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4006 ADDITIONAL REQUIREMENTS FOR PANCREAS TRANSPLANTATION SERVICES

~~(a) An applicant proposing to establish a new pancreas transplantation service or to expand an existing pancreas transplantation service shall document that no more than 2 pancreas transplantation services shall be located in the same solid organ transplantation service area following completion of the project.~~

~~(a)~~ (b) An applicant proposing to establish a new pancreas transplantation service or to expand an existing pancreas transplantation service shall project a cumulative minimum of 10 pancreas transplantation procedures by the end of the second full year of operation following the date on which the first pancreas transplant procedure is performed.

~~(b)~~ (c) An applicant proposing to establish a new pancreas transplantation service or to expand an existing pancreas transplantation service shall demonstrate that it offers all of the following the services listed in this Rule or shall provide documentation obviating the need for an item:

- (1) a histocompatibility laboratory, or a written agreement with such a laboratory;
- (2) anatomic and clinical pathology;
- (3) 24-hour angiography;
- (4) an intensive care unit with 24-hour per day resident coverage;
- (5) approved on-site renal transplant services;
- (6) physicians with rehabilitation expertise;
- (7) both adult and pediatric surgeons, as appropriate; and
- (8) both adult and pediatric diabetologists, as appropriate, on the active medical staff.

~~(c)~~ (d) The applicant shall establish and maintain all of the following:

- (1) insulin,
- (2) C-peptide,
- (3) glycosylated hemoglobin assays, and
- (4) glucometer glucose assays.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4007 ADDITIONAL REQUIREMENTS FOR KIDNEY TRANSPLANTATION SERVICES

~~(a) An applicant proposing to establish a new kidney transplantation service or to expand an existing kidney transplantation service shall document that no more than 2 kidney transplantation services shall be located in the same solid organ transplantation service area following completion of the project.~~

~~(a)~~ (b) An applicant proposing to establish a new kidney transplantation service shall project a cumulative minimum of 25 kidney transplantation procedures by the end of the second full year of operation following the date on which the first kidney transplant procedure is performed.

~~(b)~~ (c) An applicant proposing to establish a new kidney transplantation service or to expand an existing kidney

transplantation service shall demonstrate that it provides all of the following: the services listed in this Rule or shall provide documentation obviating the need for an item:

- (1) a histocompatibility laboratory, or a written agreement with such a laboratory;
- (2) an intensive care unit with 24-hour per day resident coverage;
- (3) inpatient renal dialysis services;
- (4) available freestanding renal dialysis clinic services;
- (5) pre-dialysis, dialysis and post-transplantation nutritional services;
- (6) bacteriologic services;
- (7) biochemical services;
- (8) pathological services;
- (9) radiologic services; and
- (10) ophthalmology retinal eye services.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4008 ADDITIONAL REQUIREMENTS FOR INTESTINE TRANSPLANTATION SERVICES

~~An applicant proposing to establish a new intestine transplantation service or to expand an existing intestine transplantation service shall document that no more than two intestine transplantation services shall be located in the same solid organ transplantation service area following completion of the project.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.4010 NEED FOR SERVICES

~~The applicant shall provide a description of the data sources used to project utilization, assessments of the accuracy of the data, the statistical method used to make the projections, the expected volume of organs that will be available for transplantation and the anticipated relationship between projected volumes and patient outcomes. This information shall be set out separately for each type of solid organ transplantation service that the applicant proposes to offer.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.4011 DATA REPORTING REQUIREMENTS

~~The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.4012 ACCESSIBILITY

(a) An applicant proposing to establish a new solid organ transplantation service or expand an existing solid organ transplant service shall document the procedures that will be used to ensure that patient selection criteria is public, fair and equitable with primary public and that screening is based on medical suitability which is designed to offer transplantation to those who can benefit the most from it in terms of probability of living for a significant period of time with a reasonable prospect of rehabilitation.

(b) ~~The applicant shall provide written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admission requirements for patients in each of the following payer categories:~~

- ~~(1) Medicaid;~~
- ~~(2) Medicare;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

(c) ~~The applicant shall provide a written description of the billing procedures, including the credit and collection policies, that will be utilized by the facility.~~

(d) ~~The applicant shall describe the procedures for the referral of patients from one institution to another institution when space, personnel or other limitations prevent the referring institution from timely serving the patient's needs.~~

(e) ~~The applicant shall document that the members of the health care community in the solid organ transplantation service area, including all providers of solid organ transplantation services and organ procurement organizations in North Carolina have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

(f) ~~An applicant proposing to establish a new solid organ transplantation service or to expand an existing solid organ transplantation service shall provide documentation describing the mechanism for donor/patient compatibility that will be used to ensure that the uninsured and medically underserved will have access to solid organ transplantation services.~~

Statutory Authority G.S. 131E-177(1); 131E-183.

SECTION .4100 - CRITERIA AND STANDARDS FOR PEDIATRIC INTENSIVE CARE SERVICES

.4102 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a new pediatric intensive care unit or to add a bed to an existing pediatric intensive care unit shall use the Acute Care Facility/Medical Equipment application form.

(b) The applicant shall also submit the following additional information:

- (1) the number of designated pediatric intensive care

beds currently operated by the applicant and the number of designated pediatric intensive care beds to be operated following completion of the proposed project;

- (2) documentation of the applicant's experience in treating pediatric patients at its facility during the past twelve months, including:
 - (A) the number of pediatric trauma patients provided emergency room services;
 - (B) the number of pediatric patients provided surgical and emergency surgical services;
 - (C) the number of inpatient days of care provided to pediatric patients; and
 - (D) the number of pediatric patients treated and referred to a pediatric intensive care unit in another facility;
- (3) the number of patients, by county of residence, in the proposed pediatric intensive care service area that are projected to need pediatric intensive care services in each of the first twelve quarters of operation following the completion of the project; also, all assumptions and methodologies for projecting need shall be stated;
- (4) the projected number, by county of residence, of those patients identified in response to Item (3) of this Rule that are projected to be served in the applicant's facility in each of the first twelve calendar quarters following completion of the proposed project; also, all assumptions and methodologies for projecting utilization shall be stated;
- (5) documentation that at least 90 percent of the anticipated patient population is within 90-minute automobile driving time one-way from the facility, unless the applicant demonstrates that its facility provides:
 - (A) specialized levels of pediatric intensive care services to a large and geographically diverse population, or
 - (B) air ambulance services;
- (6) documentation that the existing and approved pediatric intensive care units in the same service area and adjacent service areas are unable to accommodate the projected need for pediatric intensive care services;
- (7) documentation that the services shall be offered in conformance with the requirements of federal, state, and local regulatory bodies;
- (8) correspondence from physicians, hospitals, or other health care facilities documenting their intent to refer patient's to the applicant's pediatric intensive care unit;
- (9) evidence of the applicant's capability to communicate effectively with emergency transportation agencies;
- (10) copies of written policies that provide for parental participation in the care of the child, as the

child's condition permits, in order to facilitate family adjustment and continuity of care following discharge;

- (11) copies of written policies and procedures regarding the operation of the pediatric intensive care unit, including but not limited to the following:
 - (A) the admission and discharge of patients;
 - (B) infection control;
 - (C) safety procedures; and
 - (D) the triaging of patients requiring consultations, including the transfer of patients to another facility;
 - (E) the protocol for obtaining emergency physician care for a critically ill child.
- (12) documentation that the proposed service shall be operated in an area of the facility that is organized as a physically and functionally distinct entity and that has controlled access;
- (13) a detailed floor plan of the proposed area drawn to scale; and
- (14) documentation that unit staff shall be able to observe all patients from at least one vantage point.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4103 REQUIRED PERFORMANCE STANDARDS

(a) An applicant proposing to develop a new pediatric intensive care unit or to add a bed to an existing pediatric intensive care unit shall demonstrate that the following standards are met:

- (1) the overall average annual occupancy rate of the number of beds in the applicant's existing pediatric intensive care unit for the twelve months immediately preceding the submittal of the application proposal of the number of beds in the applicant's existing pediatric intensive care unit shall have been at least 70 percent in units with 20 or more pediatric intensive care beds, 65 percent in units with 10-19 pediatric intensive care beds, and 60 percent in units with 1-9 pediatric intensive care beds; and
- (2) the projected annual occupancy rate of the applicant's ~~proposed~~ new or expanded pediatric intensive care unit in the third year of operation following completion of the proposed project shall be at least 70 percent in units with 20 or more pediatric intensive care beds, 65 percent in units with 10-19 pediatric intensive care beds, and 60 percent in units with 1-9 pediatric intensive care beds.

(b) The applicant shall document all assumptions and provide data supporting the methodology used for each of the projections required in this Rule.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4104 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to develop a new pediatric intensive care unit or to add a bed to an existing pediatric intensive care unit shall document that the following items shall be available; except that if an item shall not be available, then documentation shall be provided obviating the need for that item:

- (1) twenty-four hour laboratory services including microspecimen chemistry techniques and blood gas determinations;
- (2) twenty-four hour radiology services, including portable radiological equipment;
- (3) twenty-four hour blood bank services;
- (4) twenty-four hour pharmacy services with pediatric dosage expertise;
- (5) twenty-four hour respiratory therapy services with pediatric expertise;
- (6) twenty-four hour CT scanning services;
- (7) EEG testing capability;
- (8) oxygen and air and suction capability;
- (9) pedsiatric specific cardiovascular monitoring capability with alarm capacity;
- (10) mechanical ventilatory assistance equipment including airways, manual breathing bag, ventilator and respirator of pediatric patient size;
- (11) endotracheal intubation capability;
- (12) a cardiac arrest management plan;
- (13) a patient weighing device for bed patients;
- (14) isolation capability;
- (15) a designated social worker;
- (16) consultation with the following medical subspecialties:
 - (A) Pediatric Cardiology and cardiology diagnostic services;
 - (B) Pediatric Surgery or surgeons with training or interest in pediatrics, including neurosurgery, otolaryngology and cardiothoracic surgery;
 - (C) Pediatric Neurology; and
 - (D) other pediatric subspecialties as required; and
- (17) pediatric expertise in the following areas:
 - (A) physical therapy;
 - (B) occupational therapy;
 - (C) speech therapy; and
 - (D) dietary support.

(b) An applicant shall describe the types of patient care monitoring that shall be available to meet the specific needs of each type of patient that the applicant proposes to serve.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4105 REQUIRED STAFFING AND STAFF TRAINING

(a) An applicant proposing to develop a new pediatric intensive care unit or to add a bed to an existing pediatric intensive care unit shall demonstrate that the following staffing requirements listed in this Rule will shall be met or shall provide documentation obviating the need for an item:

- (1) nursing care shall be supervised by a registered nurse with training in the following:
 - (A) patient care monitoring;
 - (B) drug administration;
 - (C) fluid and electrolyte administration;
 - (D) respiratory care; and care;
 - (E) pediatric advanced life support certification;
 - (F) pediatric growth and development; and
 - (G) pediatric nursing skills.
- (2) direction of the unit shall be provided by a physician with training, experience and expertise in critical care; and
- (3) documentation from the medical staff confirming that pediatricians and surgeons of at least the resident or staff level shall be in the facility twenty-four hours per day.

(b) An applicant shall document that inservice training or continuing education programs specific to pediatric intensive care services shall be provided to the pediatric intensive care staff and shall describe the inservice training and continuing care programs which shall be offered.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4106 DATA REPORTING REQUIREMENTS

~~The facility shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

.4107 ACCESSIBILITY

(a) ~~The applicant shall provide documentation describing the mechanism that shall be used to insure that the projected number of medically underserved shall be served in the unit.~~

(b) ~~The applicant shall provide a copy of the written admissions policies identifying any prepayment or deposit requirements for the facility and stating the admissions requirements for each of the following payer categories:~~

- ~~(1) Medicare;~~
- ~~(2) Medicaid;~~
- ~~(3) Blue Cross and Blue Shield;~~
- ~~(4) Commercial Insurance;~~
- ~~(5) State Employees Health Plan;~~
- ~~(6) Self Pay (includes self-pay, indigent and charity care); and~~
- ~~(7) Other as identified by the applicant.~~

(c) ~~The applicant shall provide a written description of the billing procedures, including the credit collection policies, that shall be utilized by the facility.~~

(d) ~~The applicant shall document that the health care community in the "pediatric intensive care" service area,~~

~~including the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the facility's referral mechanisms and admissions policies for the medically underserved.~~

Statutory Authority G.S. 131E-177(1); 131E-183(b).

SECTION .4200 - CRITERIA AND STANDARDS FOR HOSPICES, HOSPICE INPATIENT FACILITIES, AND HOSPICE RESIDENTIAL CARE FACILITIES

.4202 INFORMATION REQUIRED OF APPLICANT

(a) An applicant proposing to develop a hospice shall complete the application form for ~~Home Health Agency and~~ Hospice Services. An applicant proposing to develop hospice inpatient facility beds or hospice residential care facility beds shall complete the application form for Hospice Inpatient and Hospice Residential Care Services.

(b) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall provide the following information:

- (1) the county or counties included in the hospice service area for the proposed project in accordance with the definition in Rule .4201 of this Section;
- (2) the annual unduplicated number of hospice patients projected to be served in each of the first two years following completion of the project and the methodology and assumptions used to make the projections;
- (3) the projected number of hospice patients to be served in each of the first 24 months following completion of the project and the methodology and assumptions used to make the projections;
- ~~(4) the projected number of visits, by level of care (i.e., routine home care, respite care, inpatient care, and continuous care), to be provided for each of the following services in each of the first 24 months following completion of the project and the methodology and assumptions used to make the projections:~~
 - ~~(A) nursing services;~~
 - ~~(B) social work services;~~
 - ~~(C) certified nursing assistant or home health aide services;~~
 - ~~(D) homemaker services;~~
 - ~~(E) counseling services, including dietary, spiritual, and family counseling;~~
 - ~~(F) bereavement counseling services; and~~
 - ~~(G) volunteer services;~~
- (4) (5) the projected number of patient care days, by level of care (i.e., routine home care, respite care, and inpatient care), to be provided in each of the first 24 months two years of operation following completion of the project and the methodology and assumptions used to make the

- (5) ~~projection;~~ projections shall be clearly stated;
 (6) ~~the projected number of hours of continuous care to be provided in each of the first 24 months two years of operation following completion of the project and the methodology and assumptions used to make these projections;~~
 (7) ~~the projected average annual cost per hour of continuous care for each of the first two operating years following completion of the project and the methodology and assumptions used to make the projections;~~
 (8) ~~the projected average annual cost per patient care day, by level of care (i.e., routine home care, respite care, and inpatient care), for each of the first two operating years following completion of the project and the methodology and assumptions used to project the average annual cost;~~
 (9) ~~the names of the anticipated sources of referrals and copies of proposed patient referral agreements with health and social services providers located within the hospice service area; and documentation of attempts made to establish working relationships with sources of referrals to the hospice services and copies of proposed agreements for the provision of inpatient care.~~
 (10) ~~documentation that a written plan for bereavement counseling shall be initiated upon the first offering of hospice services and shall be completed prior to the provision of bereavement care.~~

(c) An applicant proposing to develop a hospice shall also provide documentation that the hospice shall be licensed and shall be certified for participation in the Medicare program within one year after issuance of the certificate of need.

(d) An applicant proposing to develop hospice inpatient or hospice residential care facility beds shall also provide the following information:

- (1) a description of the means by which hospice services ~~will~~ shall be provided in the patient's own home;
- (2) copies of the proposed contractual agreements, with a licensed hospice or a licensed home care agency with a hospice designation on its license, for the provision of hospice services in the patient's own home;
- (3) a copy of the admission policies, including the criteria that ~~will~~ shall be used to select persons for admission and to assure that terminally ill patients are served in their own homes as long as possible; and
- (4) documentation that a home-like setting ~~will~~ shall be provided in the facility.

Statutory Authority G.S. 131E-177(1); 131E-183.

.4204 REQUIRED SUPPORT SERVICES

(a) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall demonstrate that the following core services will be provided directly by the applicant to the patient and the patient's family or significant others:

- (1) nursing services;
- (2) social work services;
- (3) counseling services including dietary, spiritual, and family counseling;
- (4) bereavement counseling services;
- (5) volunteer services;
- (6) physician services; and
- (7) medical supplies.

(b) An applicant shall demonstrate that the nursing services listed in Paragraph (a) of this Rule will be available 24 hours a day, seven days a week.

(c) An applicant proposing to develop a hospice, hospice inpatient facility beds, or hospice residential care facility beds shall provide documentation that the following services, when ordered by the attending physician and specified in the care plan, ~~will~~ shall either be provided directly by the hospice or provided through a contract arranged by the hospice:

- (1) hospice inpatient care provided in a licensed hospice inpatient facility bed, licensed acute care bed or licensed nursing facility bed,
- (2) physical therapy,
- (3) occupational therapy,
- (4) speech therapy,
- (5) home health aide services,
- (6) medical ~~supplies or~~ equipment,
- (7) respite care,
- (8) homemaker services, and
- (9) continuous care.

(d) An applicant proposing to develop a hospice inpatient facility or a hospice residential care facility shall provide documentation that pharmaceutical services will be provided directly by the facility or by contract.

(e) For each of the services listed in Paragraphs (c) and (d) of this Rule which are proposed to be provided by contract, the applicant shall provide a copy of a letter from the proposed provider ~~expressing their willingness to enter into a contract or shall submit a copy of the contract, which expresses their interest in working with the proposed facility.~~

Statutory Authority G.S. 131E-177(1); 131E-183.

.4206 ACCESSIBILITY

(a) ~~The applicant shall demonstrate that it will offer palliative care to terminally ill persons and their families regardless of age, gender, nationality, race, creed, or disability.~~

(b) ~~The applicant shall describe the mechanism that it will use to assure that the projected number of medically underserved and indigent persons will be served.~~

~~(c) The applicant shall provide a written description of its billing procedures, including the credit and collection policies that will be utilized.~~

~~(d) The applicant shall document that the health care community in the hospice service area including, but not limited to the Departments of Social Services and Health, have been invited to comment on the proposed project, particularly with regard to the referral mechanisms and admissions policies for the medically underserved population.~~

Statutory Authority G.S. 131E-177(1).

.4207 DATA REPORTING REQUIREMENTS

~~The applicant shall agree to provide, upon the request of the Division of Facility Services, the following types of data and information, in accordance with data format and reporting requirements formulated by the Division of Facility Services:~~

- ~~(1) demographic data on patients treated;~~
- ~~(2) financial data; and~~
- ~~(3) clinical data.~~

Statutory Authority G.S. 131E-177(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the Division of Facility Services intends to adopt rules cited as 10 NCAC 3R .7001 - .7008.

Temporary: These Rules were filed as temporary rules effective October 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 2:00 p.m. on November 2, 1995 at the Division of Facility Services, Council Building, Public Hearing Room 201, 701 Barbour Drive, Raleigh, NC 27626-0530.

Reason for Proposed Action: To adopt the permanent version of the temporary rules regarding the process and requirements for obtaining certification as a data processor pursuant to Senate Bill 345.

Comment Procedures: Any interested person may present

.7003 REQUIREMENTS FOR CERTIFICATION

A party desiring to be certified as a statewide data processor shall make a written application to the Division that complies with the following requirements:

- (1) The applicant must make a satisfactory showing that it is capable of making available annually to the Division, at no charge, a report which compares the 35 most frequently reported charges of the hospitals and freestanding ambulatory surgical facilities reporting patient data to the applicant during the calendar year. Each annual report shall be due to the Division within 180 days after the end of the calendar year.
- (2) The applicant must make a satisfactory showing that it is capable of receiving from hospitals and freestanding

comments by oral presentation or by submitting a written statement. Persons wishing to make oral presentations should contact Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone number (919) 733-2342. In order to allow the Certificate of Need Section sufficient time to review and evaluate your written comments prior to the hearing, please submit your written comments to Mr. Jackie Sheppard at the above address by October 26, 1995, but in no case later than the hearing on November 2, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3R - CERTIFICATE OF NEED REGULATIONS

SECTION .7000 - CERTIFICATION OF STATEWIDE DATA PROCESSOR

.7001 PURPOSE

This Section sets forth the process and requirements for obtaining certification as a statewide data processor.

Statutory Authority G.S. 131E-214.1(6).

.7002 DEFINITIONS

(a) The definitions set forth in G.S. 131E-214.1 shall apply to this Section.

(b) As used in this Section:

- (1) "Applicant" means a party applying to the Division for certification as a statewide data processor.
- (2) "HCFA" means the Health Care Financing Administration of the U.S. Department of Health and Human Services, or any successor agency.

(c) All references in this Section to the "HCFA 1500" and "HCFA 1450" claim forms, include references to their successor forms that are developed pursuant to federal law under the auspices of HCFA, the National Uniform Billing Committee, or the North Carolina State Uniform Billing Committee.

Statutory Authority G.S. 131E-214.1(6).

ambulatory surgical facilities throughout the State the patient data elements specified in Items (3) through (5) of this Rule.

- (3) With regard to patient data concerning inpatients discharged by hospitals, the applicant must make a satisfactory showing that is capable of compiling and maintaining a uniform set of data from the patient data which shall include the following HCFA 1450 (UB-92) data elements for every inpatient discharged regardless of payor:

	<u>DATA ELEMENT</u>	<u>DESCRIPTION</u>
(1)	<u>Patient Control Number</u>	<u>Form Locator 3 - As stated in the North Carolina HCFA 1450 Manual</u>
(2)	<u>Bill Type</u>	<u>Form Location 4 - As Stated in the North Carolina HCFA 1450 Manual</u>
(3)	<u>Provider Identification</u>	
(A)	<u>Medicaid Base Provider Number</u>	<u>The number assigned to the provider by Medicaid or as assigned by the certified statewide data processor (for batching only)</u>
(B)	<u>Federal Tax Number</u>	<u>Form Locator 5 - As stated in the North Carolina HCFA 1450 Manual</u>
(4)	<u>Zip Code of Patient Address</u>	<u>Form Locator 13 - Only the zip code portion of this field is required. Code as stated in the North Carolina HCFA 1450 Manual</u>
(5)	<u>Patient Birth Date</u>	<u>Form Locator 14 - As stated in the North Carolina HCFA 1450 Manual</u>
(6)	<u>Patient Sex</u>	<u>Form Locator 15 - As stated in the North Carolina HCFA 1450 Manual</u>
(7)	<u>Admission Date</u>	<u>Form Locator 17 - As stated in the North Carolina HCFA 1450 Manual</u>
(8)	<u>Admission Type</u>	<u>Form Locator 19 - As stated in the North Carolina HCFA 1450 Manual</u>
(9)	<u>Source of Admission</u>	<u>Form Locator 20 - As stated in the North Carolina HCFA 1450 Manual</u>
(10)	<u>Patient Status</u>	<u>Form Locator 22 - As stated in the North Carolina HCFA 1450 Manual</u>
(11)	<u>Discharge Date (Statement Covers Period)</u>	<u>Form Locator 6 - As stated in the North Carolina HCFA 1450 Manual</u>
(12)	<u>All Revenue Codes and Associate Charges</u>	<u>Forms Locators 42 and 47- As stated in the North Carolina HCFA 1450 Manual</u>
(13)	<u>Payer Identification</u>	<u>Form Locator 50a - Classifications code and specific carrier identification code for primary payer</u>

(14)	<u>Certificate/Social Security/Health</u>	<u>Form Locator 60a - As stated in the Insurance Claim/Identification Number North Carolina HCFA 1450 Manual</u>
(15)	<u>Insurance Group Number</u>	<u>Form Locator 62a - As stated in the North Carolina HCFA 1450 Manual</u>
(16)	<u>Principal Diagnosis</u>	<u>Form Locator 67 - As stated in the North Carolina HCFA 1450 Manual</u>
(17)	<u>Other Diagnoses 8</u>	<u>Form Locators 68-75 - As stated in the North Carolina HCFA 1450 Manual</u>
(18)	<u>External Cause of Injury Code (E Code)</u>	<u>Form Locator 77 - As stated in the North Carolina HCFA 1450 Manual/whenever the principal diagnosis is an injury, poisoning or adverse effect</u>
(19)	<u>Principal Procedure and Date</u>	<u>Form Locator 80 - As stated in the North Carolina HCFA 1450 Manual</u>
(20)	<u>Other Procedures and Dates</u>	<u>Form Locator 81a-e - As stated in the North Carolina HCFA 1450 Manual</u>
(21)	<u>Attending Physician Identification</u>	<u>Form Locator 82 - Only the UPIN is required. Code as stated in the North Carolina HCFA 1450 Manual</u>
(22)	<u>Other Physician Identification</u>	<u>Form Locator 83 - Only the UPIN is required. Code as stated in the North Carolina HCFA 1450 Manual</u>

- (4) With regard to patient data concerning ambulatory surgery patients released from hospitals and freestanding ambulatory surgical facilities, the applicant must make a satisfactory showing that it is capable of compiling and maintaining a uniform set of data from the patient data which shall include the following HCFA 1450(UB-92) data elements for every ambulatory surgical patient released regardless of payor:

	<u>DATA ELEMENT</u>	<u>DESCRIPTION</u>
(1)	<u>Patient Control Number</u>	<u>Form Locator 3 - As stated in the North Carolina HCFA 1450 Manual</u>
(2)	<u>Bill Type</u>	<u>Form Locator 4 - As stated in the North Carolina HCFA 1450 Manual</u>
(3)	<u>Provider Identification</u>	
(A)	<u>Medicaid Base Provider Number</u>	<u>The number assigned to the provider by Medicaid or as assigned by the certified statewide data processor (for batching only)</u>
(B)	<u>Federal Tax Number</u>	<u>Form Locator 5 - As stated in the North Carolina HCFA 1450 Manual</u>

(4)	<u>Zip Code of Patient Address</u>	<u>Form Locator 13 - Only the zip code portion of this field is required. Code as stated in the North Carolina HCFA 1450 Manual</u>
(5)	<u>Patient Birth Date</u>	<u>Form Locator 14 - As stated in the North Carolina HCFA 1450 Manual</u>
(6)	<u>Patient Sex</u>	<u>Form Locator 15 - As stated in the North Carolina HCFA 1450 Manual</u>
(7)	<u>Admission Date</u>	<u>Form Locator 17 - As stated in the North Carolina HCFA 1450 Manual</u>
(8)	<u>Admission Type</u>	<u>Form Locator 19 - As stated in the North Carolina HCFA 1450 Manual</u>
(9)	<u>Source of Admission</u>	<u>Form Locator 20 - As stated in the North Carolina HCFA 1450 Manual</u>
(10)	<u>Patient Status</u>	<u>Form Locator 22 - As stated in the North Carolina HCFA 1450 Manual</u>
(11)	<u>Discharge Date (Statement Covers Period)</u>	<u>Form Locator 6 - As stated in the North Carolina HCFA 1450 Manual</u>
(12)	<u>All Revenue Codes and Associated Charges</u>	<u>Form Locators 42 and 47 - As stated in the North Carolina HCFA 1450 Manual</u>
(13)	<u>Payer Identification</u>	<u>Form Locator 50a - Classification code and specific carrier identification</u>
(14)	<u>Certificate/Social Security/Health</u>	<u>Form Locator 60a - As stated in the Insurance Claim/Identification Number North Carolina HCFA 1450 Manual</u>
(15)	<u>Insurance Group Number</u>	<u>Form Locator 62a - As stated in the North Carolina HCFA 1450 Manual</u>
(16)	<u>Principal Diagnosis</u>	<u>Form Locator 67 - As stated in the North Carolina HCFA 1450 Manual</u>
(17)	<u>Other Diagnoses</u>	<u>8 Form Locators 68-75 - As stated in the North Carolina HCFA 1450 Manual</u>
(18)	<u>External Cause of Injury Code (E-Code)</u>	<u>Form Locator 77 - As stated in the North Carolina HCFA 1450 Manual/whenever the principal diagnosis is an injury, poisoning or adverse effect</u>
(19)	<u>Principal Procedure and Date</u>	<u>Form Locator 80 - As stated in the North Carolina HCFA 1450 Manual</u>
(20)	<u>Other Procedures and Dates</u>	<u>Form Locators 81a-e - As stated in the North Carolina HCFA 1450 Manual</u>

(21)	<u>Attending Physician Identification</u>	<u>Form Locator 82 - Only the UPIN is required. (Code as stated in the North Carolina HCFA 1450 Manual</u>
(22)	<u>Other Physician Identification</u>	<u>Form Locator 83 - Only the UPIN is required. Code as stated in the North Carolina HCFA 1450 Manual</u>

- (5) With regard to patient data concerning ambulatory surgery patients released from hospitals and freestanding ambulatory surgical facilities, the application must make a satisfactory showing that it is capable of compiling and maintaining a uniform set of data from the patient data which shall include the following HCFA 1500 data elements for every ambulatory surgical patient released regardless of payor:

(1)	<u>Payer Identification</u>
(2)	<u>Insured's ID Number</u>
(3)	<u>Patient's Date of Birth</u>
(4)	<u>Gender of Patient</u>
(5)	<u>Zip Code of Patient Address</u>
(6)	<u>Diagnosis or Nature of Illness or Injury (1-4)</u>
(7)	<u>Dates of Service</u>
(8)	<u>Place of Service</u>
(9)	<u>Type of Service</u>
(10)	<u>Procedures, Services, and Supplies (including modifiers if applicable)</u>
(11)	<u>Charges</u>
(12)	<u>Days or Units</u>
(13)	<u>Federal Tax ID</u>
(14)	<u>Patient's Account Number</u>
(15)	<u>Total Charge</u>
(16)	<u>Attending Physician's UPIN Number</u>
(17)	<u>Medicaid Base Provider Number or Number Assigned by Certified State-wide Data Processor</u>

- (6) The applicant must make a satisfactory showing that it is capable of examining the patient data it receives for accuracy, informing the hospital or freestanding ambulatory surgical facility submitting the patient data of all potential errors in the patient data which are discovered as a result of the examination for accuracy, and correcting the patient data as directed by the hospital or freestanding ambulatory surgical facility. An applicant shall be deemed to have satisfactorily shown that it is capable of examining patient data for accuracy if the applicant has made a satisfactory showing that it is capable of designating a record as an error record when:
- (a) A record reported on a HCFA 1450 (UB-92) form contains an invalid or all-blank field for any of the following HCFA 1450 (UB-92) data elements: Patient Control Number, Bill Type, Federal Tax I.D., Zip Code, Date of Birth, Sex, Admission Date, Admission Type, Source of Admission, Patient Status, Statement Covers Period, Revenue Codes and Charges, Primary Payer, Principal Diagnosis, Attending Physician Identification.
- (b) A record reported on a HCFA 1500 form contains an invalid or all-blank field for any of the following HCFA 1500 data elements: Payor Identification, Insured's I.D. Number, Federal Tax I.D., Zip Code, Date of Birth,

Sex, Dates of Service, Place of Service, Type of Service, Procedures Defined with CPT-HCPCS Code with Modifiers, Principal Diagnosis Codes, Principal and Secondary Surgical Procedure, Patient's Account Number, Attending Physician Identification.

- (c) The sum indicated by the data element concerning total charges does not equal the sum of all other charges reported on the record.
 - (d) An inpatient record reported on a HCFA 1450 (UB-92) contains any of the following data elements which contain an invalid code: Other Diagnoses, Principal Procedure Code and Date, Other Procedure Codes and Dates, External Cause of Injury Code, Other Physician Identification (if a procedure was performed).
 - (e) An ambulatory surgical patient record reported on a HCFA 1450 (UB-92) form contains any of the following data elements which contain an invalid code: Other Diagnoses, Other Procedure Codes and Dates, External Cause of Injury Code.
 - (7) The applicant shall make satisfactory showing that it is capable of:
 - (a) compiling reports from patient data which shall further the purposes of the Medical Care Data Act, as set forth in G.S. 131E-214(b), such as reports enabling a review and comparison of charges, utilization patterns, and quality of medical services;
 - (b) producing such reports at least on a calendar quarter basis, with reports concerning patients discharged or released during a specific calendar quarter being published at least within 180 days after the end of said calendar quarter;
 - (c) making such reports available upon request to all interested persons at a reasonable charge.
 - (8) The applicant shall make a satisfactory showing that it is capable of ensuring that adequate measures will be taken to provide system security for all data and information received from hospitals and freestanding ambulatory surgical facilities.
 - (9) The applicant shall make a satisfactory showing that it is capable of protecting the confidentiality of patient records and complying with applicable laws and regulations concerning patient confidentiality, including the confidentiality of patient-identifying information, and that it shall not disclose patient-identifying information unless:
 - (a) the information was originally submitted by the party requesting disclosure; or
 - (b) the State Health Director requests specific individual records for the purpose of protecting and promoting the public health under G.S. 130A, and the disclosure is not otherwise prohibited by federal law or regulation.
- The applicant shall also make a satisfactory showing that it shall make such records available to the State Health Director at a reasonable charge.

Statutory Authority G.S. 131E-214.1(6).

.7004 APPLICATION REVIEW

The Division shall notify each applicant of the Division's decision concerning the applicant's request for certification as a statewide data processor within 90 days after the Division has received the applicant's written application unless the Division notifies the applicant that the review has been extended. If any portion of an application lacks certain information or is unclear, the Division may request additional information or clarification from the applicant during the review period; provided, however, that the Division is not required to request such additional information or clarification, and the Division may deny certification on the basis that the application lacks information or is unclear.

Statutory Authority G.S. 131E-214.1(6).

.7005 PERIOD OF CERTIFICATION

An applicant who demonstrates through its application that it presently is performing each of the requirements specified in 10 NCAC 3R .7003 (with the exception of the requirement of making annual reports to the Division found in 10 NCAC 3R .7003(1), and the requirement of disclosing data to the State Health Director found in 10 NCAC 3R .7003(9), for which requirements the applicant needs only to

make a satisfactory showing that it is capable of performing the requirements), shall be certified as a statewide data processor for a period of three years. An applicant who demonstrates through its application that it is capable of performing each of the requirements specified in 10 NCAC 3R .7003 but who presently is not performing each of the requirements specified in 10 NCAC 3R .7003(2)-(9) (excluding the requirement in 10 NCAC 3R .7003(9) to disclose data to the State Health Director), shall be granted a certificate for a one year period. If within that one year period the applicant makes a satisfactory showing to the Division by written application that it then is performing all of the requirements specified in 10 NCAC 3R .7003, the applicant shall be granted certification as a statewide data processor for an additional two year period.

Statutory Authority G.S. 131E-214.1(6).

.7006 STANDARDS FOR REFUSAL, SUSPENSION OR REVOCATION OF CERTIFICATION

A certificate applied for or issued under this Chapter may be refused, suspended, or revoked by the Division if the Division determines that the applicant or statewide data processor cannot or does not perform the requirements

specified in 10 NCAC 3R .7003 and G.S. 131E-214.4.

Statutory Authority G.S. 131E-214.1(6).

.7007 FAILURE TO TIMELY RENEW

A certificate issued under this Chapter shall be automatically suspended by the Division after a failure to renew the certificate for a period of more than three months after the renewal date.

Statutory Authority G.S. 131E-214.1(6).

.7008 PROCEDURE

Except as otherwise provided in this Chapter, the procedure for revocation, suspension, or refusal of certification shall be in accordance with the provisions of G.S. 150B.

Statutory Authority G.S. 131E-214.1(6).

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Medical Care Commission intends to amend rules cited as 10 NCAC 3T .0102, .0201 - .0202, .0206, .0208, .0301, .0303, .0401 - .0402, .0501, .0504 - .0505, .0601, .0701, .0801 - .0802, .0901 - .0902, .1001, .1102, .1113, .1202, .1204; adopt rules cited as 10 NCAC 3T .0209 - .0210, .0604 - .0605, .1116, .1212; and repeal rules cited as 10 NCAC 3T .0203 - .0205, .0207, .0302, .0403, .0502 - .0503, .0602 - .0603, .0702 - .0703, .0803, .1002.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 9:30 a.m. on December 1, 1995 at the Council Building, Room 201, 701 Barbour Drive, Raleigh, NC.

Reason for Proposed Action: *To clarify and enhance rules governing hospice inpatient facilities.*

Comment Procedures: *In order to allow the Commission sufficient time to review and evaluate your written comments prior to the hearing, please submit your written comments to Mr. Jackie Sheppard, APA Coordinator, DFS, P.O. Box 29530, Raleigh, NC 27626-0530, telephone number (919) 733-2342, by November 15, 1995, but in no case later than the hearing on December 1, 1995.*

Fiscal Note: *These Rules do not affect the expenditures or revenues of local government or state funds.*

CHAPTER 3 - FACILITY SERVICES

SUBCHAPTER 3T - HOSPICE LICENSING RULES

SECTION .0100 - GENERAL INFORMATION

.0102 DEFINITIONS

In addition to the definitions set forth in G.S. 131E-201 the following definitions shall apply throughout this Subchapter following:

- (1) "Agency" means a licensed hospice as defined in Article 10 G.S. 131E-201.3.
- (2) (1) "Attending Physician" means the physician licensed to practice medicine in North Carolina who is identified by the patient at the time of hospice admission as having the most significant role in the determination and delivery of medical care for the patient.
- (3) (2) "Care Plan" means the proposed method developed in writing by the interdisciplinary care team through which the hospice seeks to provide services which meet the patient's and family's medical, psychosocial and spiritual needs.
- (4) (3) "Clergy Member" means an individual who has received a degree from an accredited theological school and has fulfilled appropriate denominational seminary requirements; or an individual who, by ordination or authorization from the individual's denomination, has been approved to function in a pastoral capacity. ~~The clergy member must have experience in pastoral duties and be capable of providing for hospice patient's spiritual needs.~~ Each hospice shall designate a clergy member responsible for coordinating spiritual care to hospice patients and families.
- (5) "Patient Family Volunteer" means an individual who has received orientation and training as defined in Rule .0402 of this Subchapter, and provides volunteer services to a patient and the patient's family in the patient's home or in a hospice inpatient or residential unit or facility.
- (6) (4) "Coordinator of Patient Family Volunteers" means an individual on the hospice staff who coordinates and supervises the activities of all patient family volunteers.
- (7) (5) "Dietary Counseling" means counseling given by a qualified licensed dietitian ~~dietitian, one who meets the qualifications established by the Committee on Professional Registration of the American Dietetic Association as defined in G.S. 90-357.~~
- (8) (6) "Director" means the person having administrative responsibility for the operation of the hospice.
- (9) (7) "Governing Body" means the group of persons responsible for overseeing the operations of the hospice, specifically for the development and monitoring of policies and procedures related to all aspects of the operations of the hospice program. The governing body ensures that all services provided are consistent with accepted standards of hospice practice.
- (8) ~~"Home Health Aide" means an individual who is~~

~~a nurse aide listed on the Nurse Aide Registry, at the Division of Facility Services, and who performs personal care and other duties to hospice patients in a private home.~~

- (10) "Hospice" means a coordinated program of services as defined in G.S. 131E-176(13a).
- (11) (9) "Hospice Caregiver" means an individual on the hospice staff who has completed hospice caregiver training as defined in 10 NCAC 3T .0402 and is assigned to a hospice residential facility or unit.
- (12) (10) "Hospice Inpatient Facility or Unit" means ~~a freestanding licensed facility providing inpatient hospice care or a designated unit in a licensed facility which has a contractual agreement with a licensed hospice for the provision of hospice inpatient care.~~ a licensed facility or unit as defined in G.S. 131E-201(3a).
- (13) (11) "Hospice ~~Residence~~ Residential Facility" as defined in G.S. 131E-201(5a) is a home facility licensed to provide hospice care to no more than six hospice residents hospice patients as defined in G.S. 131E-201(4) and their families in a group residential setting.
- (14) (12) "Hospice Staff" means ~~personnel working under the jurisdiction of a hospice, either salaried employee or volunteer.~~ members of the interdisciplinary team as defined in G.S. 131E-201(7), nurse aides, administrative and support personnel and patient family volunteers.
- (15) (13) "Informed Consent" means the agreement to receive hospice care made by the patient and family which specifies in writing the type of care and services to be provided. The informed consent form is signed by the patient prior to service. If the patient's medical condition is such that a signature cannot be obtained, a signature is obtained from the individual having legal guardianship, applicable power of attorney, or the family member or individual assuming the responsibility of primary caregiver.
- (16) (14) "Inpatient Beds" means beds licensed as such by the Department of Human Resources provided for use by hospice patients, for medical management of symptoms or for respite care.
- (17) "Interdisciplinary Team" means a group of hospice staff as defined in G.S. 131E-201(7).
- (18) (15) "Licensed Practical Nurse" means a nurse holding a valid current license as required by G.S. 90, Article 9A.
- (19) (16) "Medical Director" means a physician licensed to practice medicine in North Carolina who directs the medical aspects of the hospice's patient care program.
- (20) (17) "Nurse Aide" means an individual who is qualified authorized to provide nursing care under the supervision of a licensed nurse, has completed

a training and competency evaluation program or competency evaluation program and is listed on the Nurse Aide Registry, at the Division of Facility Services. If the nurse aide performs Nurse Aide II tasks, he or she must also meet the requirements established by the N.C. Board of Nursing as defined in 21 NCAC 36 .0405.

- (21) (18) "Occupational Therapist" means ~~an individual who is registered as such with the American Occupational Therapy Association.~~ a person duly licensed as such, holding a current license as required by G.S. 90-270.29.
- (22) (19) "Patient and Family Care Coordinator" means a registered nurse designated by the hospice to coordinate the provision of hospice services for each patient and family.
- (23) (20) "Pharmacist" means an individual licensed to practice pharmacy in North Carolina as required in G.S. 90-85(15).
- (24) (21) "Physical Therapist" means an individual holding a valid current license as required by G.S. 90, Article 18B.
- (25) (22) "Physician" means an individual licensed to practice medicine in North Carolina.
- (26) "Premises" means the location or licensed site from which the agency provides hospice services or maintains patient service records or advertises itself as a hospice agency.
- (27) (23) "Primary Caregiver" means the family member or other person who assumes the overall responsibility for the care of the patient in the home.
- (28) (24) "Registered Nurse" means a nurse holding a valid current license as required by G.S. 90, Article 9A.
- (29) (25) "Respite Care" means care provided to a patient for the purpose of temporary relief to family members or others caring for the patient at home.
- (30) (26) "Social Worker" means an individual holding a master's degree or a bachelor's degree in social work from a school accredited by the Council of Social Work Education ~~with experience in a health related field and who is capable of providing for hospice patients' and families' psychosocial needs.~~ An individual holding a bachelor's or an advanced degree in psychology, counseling or psychiatric nursing may also function in this capacity ~~if the same criteria are met.~~
- (31) (27) "Speech Therapist and Language Pathologist" means an individual holding a valid current license as required by G.S. 90, Article 22.
- (28) ~~"Volunteer" means an individual, who has received appropriate orientation and training consistent with acceptable standards of hospice philosophy and practice.~~
- (32) "Spiritual Caregiver" means an individual autho-

ized by the patient and family to provide for their spiritual direction.

Statutory Authority G.S. 131E-202.

SECTION .0200 - LICENSE

.0201 LICENSE REQUIRED

No individual firm partnership, association, organization, corporation or company shall establish and operate a hospice without a license issued by the Department, except those exempted under G.S. 131E-203(b). Each hospice agency premises shall obtain a license unless exempted by G.S. 131E-203.

Statutory Authority G.S. 131E-202.

.0202 APPLICATION FOR AND ISSUANCE OF A LICENSE

(a) An application for a license to operate a hospice agency or facility shall be submitted to the Department prior to the scheduling of an initial licensure survey. a license being issued. Each application shall contain reasonable and necessary information which will include: The hospice agency shall establish, maintain and make available for inspection such documents, records and policies as required in this Section and statistical data sufficient to complete the licensure application and upon request of the Department, to submit an annual data report, including all information required by the Department as noted in Rule .1002 of this Subchapter.

(b) The Department shall issue a license to each hospice agency premises when determined to be in compliance with licensure rules. Whether initial and ongoing licensure inspections include all premises of a hospice agency and whether they include on-site inspections shall be at the discretion of the Department. Initial licensure shall be for a period of not more than one year. Subsequent licensure shall extend for a minimum of one year and a maximum of three years, at the discretion of the Department. Each license shall expire at midnight on the expiration date on the license and is renewable upon application.

(c) The license shall be posted in a prominent location accessible to public view within the premises. The agency shall also post a sign at the public access door with the hospice agency name.

(d) The license shall be issued for the premise and persons named in the application and shall not be transferable. The name and street address under which the agency operates shall appear on the license. If the agency operates a facility to provide inpatient or residential hospice care, the number of beds for each shall be reflected on the license.

(e) Prior to change of ownership or the establishment of a new hospice agency, the agency shall be in compliance with all the applicable statutes, rules and policies established under Article 10 of G.S. 131E.

(f) The licensee shall notify the Department in writing of

any proposed change in ownership or name at least 30 days prior to the effective date of the change.

(1) name and address of applicant;

(2) names of members of members of the governing body;

(3) name of director;

(4) geographic area served;

(5) types of services offered;

(6) composition of medical, paramedical, professional and volunteer staff;

(7) name of medical director and patient/family care coordinator;

(8) information related to the provision of inpatient and residential care, if applicable; and

(9) additional information as may be required to describe the scope of services offered and explain or disclose ownership, management and control.

Statutory Authority G.S. 131E-202.

.0203 ISSUANCE OF LICENSE

(a) No license shall be issued until representatives of the Department have conducted an inspection of the hospice for determination of compliance with the rules contained in this Subchapter and with G.S. Chapter 131E, Article 10.

(b) The Department shall issue a license to each hospice annually. This license is nontransferable.

(c) If the facility provides inpatient or residential care, the number of beds for each shall be reflected on the license.

Statutory Authority G.S. 131E-202.

.0204 EXPIRATION OF LICENSE

Each license shall expire at midnight on the expiration date on the license and is renewable upon application.

Statutory Authority G.S. 131E-202.

.0205 POSTING OF LICENSE

The license shall be posted in a conspicuous location accessible to public view within the premises.

Statutory Authority G.S. 131E-202.

.0206 ADVERSE ACTION

The Department may deny, suspend, revoke, recall or amend a license in accordance with G.S. 131E-205 for a hospice which significantly fails to comply with the rules contained in this Subchapter or which fails to implement an approved plan of correction for deficiencies cited by the Department in accordance with G.S. 150B which is incorporated by reference pursuant to G.S. 150B-14(c). A hospice may appeal any adverse decision made by the Department concerning its license by making such appeal in accordance with the Administrative Procedure Act, G.S. 150B and Departmental Rules 10 NCAC 1B .0200 et seq. As provided for in G.S. 131E-206, the Department shall seek

injunctive relief to prevent an entity from establishing or operating a hospice agency without a license.

- (1) The Department may amend a license by reducing it from a full license to a provisional license whenever the Department finds that:
 - (a) the licensee has substantially failed to comply with the provisions of Article 10 of G.S. 131E and the rules promulgated under that Part; and
 - (b) there is a reasonable probability that the licensee can remedy the licensure deficiencies within a reasonable length of time; and
 - (c) there is a reasonable probability that the licensee will be able thereafter to remain in compliance with the hospice licensure rules for the foreseeable future.

The Department shall give the licensee written notice of the amendment of its license. This notice shall be given by registered or certified mail or by personal service and shall set forth the reasons for the action.

- (2) The provisional license shall be effective immediately upon its receipt by the licensee and must be posted in a prominent location, accessible to public view, within the licensed premises in lieu of the full license. The provisional license shall remain in effect until:
 - (a) the Department restores the licensee to full licensure status; or
 - (b) the Department revokes the licensee's license; or
 - (c) the end of the licensee's licensure year.

If a licensee has a provisional license at the time that the licensee submits a renewal application, the license, if renewed, shall also be provisional license unless the Department determines that the licensee can be returned to full license status. A decision to issue a provisional license is stayed during the pendency of an administrative appeal and the licensee may continue to display its full license during the appeal.

- (3) The Department may revoke a license whenever:
 - (a) The Department finds that:
 - (i) the licensee has substantially failed to comply with the provisions of Article 10 of G.S. 131E and the rules promulgated under those parts; and
 - (ii) it is not reasonably probable that the licensee can remedy the licensure deficiencies within a reasonable length of time; or
 - (b) The Department finds that:
 - (i) the licensee has substantially failed to comply with the provisions of Article 10 of G.S. 131E; and
 - (ii) although the licensee may be able to remedy the deficiencies within a reasonable time, it is not reasonably probable that the licensee will be able to remain in compliance with the hospice licensure rules for the foreseeable

future; or

- (c) The Department finds that there has been any failure to comply with the provisions of Article 10 of G.S. 131E and the rules promulgated under those parts that endangers the health, safety or welfare of the patients receiving services from the agency.
The issuance of a provisional license is not a procedural prerequisite to the revocation of a license pursuant to Sub-Items (3)(a), (b) and (c) of this Rule.

Statutory Authority G.S. 131E-202.

.0207 PROCEDURE FOR APPEAL

A hospice may appeal any decision made by the Department to deny, suspend or revoke a license by making such an appeal in accordance with Administrative Procedure Act G.S. 150B, and with 10 NCAC 1B .0200 which are adopted in accordance with G.S. 150B-14(c).

Statutory Authority G.S. 131E-202; 150B-14(c).

.0208 INSPECTIONS

(a) Any hospice agency or facility shall be subject to inspections by an authorized representative representatives of the Department at any time as a condition of holding such license.

(b) Any person or organization subject to licensure which presents itself to the public as a hospice which does not hold a license, and is or may be in violation of Rule .0202 of this Section and G.S. 131E-203(a) shall be subject to proper inspections at any time by authorized representatives of the Department.

(b) (c) Any authorized representative Representatives of the Department shall make his their identity identities known to the person in charge prior to the inspection.

(e) (d) Licensure inspection of medical records shall be carried out in accordance with G.S. 131E-207.

(d) The hospice shall provide and make available for inspection statistical and financial records required to verify compliance with rules contained in this Subchapter.

(e) An inspection shall be considered whenever the purpose of the inspection is to determine whether the agency complies with the provisions of this Subchapter or whenever there is reason to believe that some condition exists which is not in compliance with the rules in this Subchapter. The agency shall allow immediate access to its premises and the records necessary to conduct an inspection and determine compliance with the rules of this Subchapter. Failure to do so shall result in termination of the survey and may result in injunctive relief as outlined in G.S. 131E-206.

(f) An agency shall file a plan of correction for cited deficiencies within 10 working days of receipt of a report of deficiencies. The Department shall review and respond to a written plan of correction within 10 working days of receipt.

(g) Representatives of the Department may visit patients in their homes to assess the agency's compliance with the patients' plans of care and with the licensure rules. Patients will be contacted by the hospice agency staff in the presence of the Department staff for permission to visit.

Statutory Authority G.S. 131E-202.

.0209 MULTIPLE PREMISES

If a person operates multiple hospice agency premises:

- (1) the Department may conduct inspections at any or all of the premises and may issue a license to each of the premises based upon inspection of any or all of the premises;
- (2) with 72 hours advance notice, the Department may request records from any of the premises necessary to ensure compliance with the rules of this Subchapter be brought to the site being inspected, including the portions of personnel records subject to review. For agencies for whom a business or government policy precludes the disclosure of employee evaluations, a statement signed by the employee's supervisor attesting to its completion shall be accepted;
- (3) the premises may share staff or administrative staff, and may centralize the maintenance of records.

Statutory Authority G.S. 131E-202.

.0210 COMPLIANCE WITH LAWS

(a) The hospice agency shall be in compliance with all applicable federal, state and local laws, rules and regulations.

(b) Staff of the hospice agency shall be currently licensed, listed or registered in accordance with applicable laws of the State of North Carolina.

Statutory Authority G.S. 131E-202.

SECTION .0300 - ADMINISTRATION

.0301 AGENCY MANAGEMENT AND SUPERVISION

(a) The governing body or its designee shall establish and implement at a minimum, a description of written policies governing all aspects of the hospice program. Such policies shall be available for inspection by the Department and shall include at a minimum:

- (1) provision for offering of the full scope of hospice services in the agency's defined service area;
- (2) admission policies;
- (3) patient's rights policies, including the right to have an advance directive;
- (4) personnel policies and records;
- (5) orientation, patient family volunteer training,

and inservice education policies;

- (6) communicable disease exposure and infection control policies;
- (7) care planning and updates policies;
- (8) medical record content and handling of orders for drug treatment administration;
- (9) annual evaluation of the agency;
- (10) storage, preventive maintenance, and infection control of supplies and equipment;
- (11) handling of complaints about services; and
- (12) emergency preparedness and disaster planning.

(b) The governing body shall designate an individual to serve as agency director.

(c) There shall be written policies that specify the authority and responsibilities of the director. In the event this position becomes vacant, the Department shall be notified in writing within five working days of the vacancy along with the name of the replacement if available. Agency policies shall define the order of authority in the absence of the administrator.

(d) The agency shall have the ultimate responsibility for the services provided under its license; however, it may make arrangements with contractors and others to provide services in accordance with Rule .0505 of this Subchapter.

(e) A hospice agency shall have written policies which identify the specific geographic areas in which the agency provides its services.

(f) If an agency plans to permanently expand its geographic service area beyond that currently on file with the Department without opening an additional site, the Department shall be notified in writing 30 days in advance. The agency must offer its full scope of hospice services in its entire geographic service area.

Statutory Authority G.S. 131E-202.

.0302 SUPERVISION AND MANAGEMENT

~~(a) The governing body shall designate individuals to serve as director, medical direct, patient and family care coordinator, and coordinator of volunteers each of whose responsibilities shall be as stated in Rule .0102 if this Subchapter.~~

~~(b) There shall be written policies that specify the authority and responsibilities of the director. In the event this position becomes vacant, the Department shall be notified in writing within 72 hours of the vacancy.~~

Statutory Authority G.S. 131E-202.

.0303 ADMINISTRATIVE FINANCIAL AND STATISTICAL RECORDS

(a) The hospice shall establish, maintain and make available for inspection records of operating costs, the hospice annual budget, budgets and statistical records.

(b) The hospice shall record, maintain and make available to the Department statistical records as requested. Records shall include as a minimum: hours worked by staff, includ-

ing patient family volunteers; patient census information including regarding the numbers of referrals, admissions and discharges; patient diagnoses; diagnoses and service location (home or inpatient) ~~and other appropriate statistical data as required for the operation of the hospice or by the State's Medical Facilities Plan.~~

(c) Records shall be retained for a period of not less than five years.

(d) When a hospice agency or facility operates as a part of a health care facility licensed under Article 5 or 6 of G.S. 131E, or as part of a larger diversified agency, records of hospice activities and expenditures that are separate and identifiable shall be maintained for the hospice agency.

Statutory Authority G.S. 131E-202.

SECTION .0400 - PERSONNEL

.0401 PERSONNEL

~~The hospice shall have written personnel policies. Personnel records shall be established and maintained for hospice staff providing direct patient and family services which include education, training, previous experience, verification of license when applicable, and other qualifications.~~

(a) Written policies shall be established and implemented by the agency regarding infection control and exposure to communicable diseases consistent with 15A NCAC 19A. These policies and procedures shall include provisions for compliance with 29 CFR 1910 (Occupational Safety and Health Standards) which is incorporated by reference including subsequent amendments. Emphasis shall be placed on compliance with 29 CFR 1910.1030 (Airborne and Bloodborne Pathogens). Copies of Title 29 Part 1910 can be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 371954, Pittsburgh, PA 15250-7954 or by calling Washington, D.C. (202) 512-1800. The cost is twenty one dollars (\$21.00) and may be purchased with a credit card. Hands-on care employees must have an annual skin test for tuberculosis. New hires must present evidence of non-infectious tuberculosis status prior to assignment in a patient's home. Individuals who have previously tested positive to the tuberculosis skin test may obtain an annual verification that they are free of tuberculosis. This verification shall be obtained from the local health department, a private physician or employee health nurse employed by the agency. The Tuberculosis Control Branch of the North Carolina Department of Environment, Health, and Natural Resources, P.O. Box 27687, Raleigh, North Carolina 27611-7687 will provide free of charge guidelines for conducting verification and Form DEHNR 3405 (Record of Tuberculosis Screening).

(b) Written policies shall be established and implemented which include personnel record content, orientation, patient family volunteer training and in-service education. Records on the subject of in-service education and attendance shall

be maintained by the agency and retained for at least one year.

(c) Job descriptions for every position, including volunteers involved in direct patient/family services, shall be established in writing which include qualifications and specific responsibilities. Individuals shall be assigned only to duties for which they are trained and competent to perform and when applicable for which they are properly licensed.

(d) Personnel records shall be established and maintained for all hospice staff, both paid and direct patient/family services volunteers. These records shall be maintained at least one year after termination from agency employment. When requested, the records shall be available on the agency premises for inspection by the Department. The records shall include:

- (1) an application or resume which lists education, training and previous employment that can be verified, including job title;
- (2) a job description with record of acknowledgment by the staff;
- (3) reference checks or verification of previous employment;
- (4) records of tuberculosis annual screening for hands-on care staff;
- (5) documentation of Hepatitis B immunization or declination for hands on care staff;
- (6) airborne and bloodborne pathogen training for hands on care staff, including annual updates, in compliance with 29 CFR 1910 and in accordance with the agency's exposure control plan;
- (7) performance evaluations according to agency policy and at least annually;
- (8) verification of staff credentials as applicable;
- (9) records of the verification of competencies by agency supervisory personnel of all skills required of hospice services personnel to carry out patient care tasks to which the staff is assigned. The method of verification shall be defined in agency policy.

Statutory Authority G.S. 131E-202.

.0402 INSERVICE EDUCATION AND TRAINING

(a) Written policies shall be established and implemented which include orientation, patient family volunteer training and inservice education for all hospice staff. Hospice residential facilities shall establish and implement a policy addressing hospice caregiver training. Records on the content of volunteer training sessions and on the subject of inservice education shall be maintained by the hospice. Attendance records on training shall be kept. Patient family care volunteers shall be required to meet the requirements of Rule .0401(a) through (d) of this Section. Training hours for patient family care volunteers shall include a minimum of 12 hours. Staff shall be required to participate in a minimum of eight hours included with other job specific

training.

(b) Training for hospice staff, including patient family volunteers, providing direct patient and family services shall include, but not be limited to the following:

- ~~(1) hospice philosophy and concepts of care;~~
- ~~(2) physiological and psychological aspects of terminal illness;~~
- ~~(3) symptom management;~~
- ~~(4) family dynamics and coping;~~
- ~~(5) communication and listening;~~
- ~~(6) emergency procedures;~~
- ~~(7) procedure for death occurring in the home;~~
- ~~(8) grief and bereavement; and~~
- ~~(9) documentation and record keeping.~~
- (1) an introduction to hospice;
- (2) the patient family volunteer role in hospice care;
- (3) concepts of death and dying;
- (4) communication skills;
- (5) care and comfort measures;
- (6) diseases and medical conditions;
- (7) psychosocial and spiritual issues related to death and dying;
- (8) the concept of the hospice family;
- (9) stress management;
- (10) bereavement;
- (11) infection control;
- (12) safety;
- (13) confidentiality; and
- (14) patient rights.

(c) In addition to the training described in Paragraph (b) of this Rule, the following additional training shall be provided to hospice caregivers assigned to a hospice residential facility:

- (1) training specific to the types of medications being administered when assisting the patient with self administration of medicines and provision of personal care from a curriculum approved by the Division of Facility Services;
- (2) orientation and instruction specific to the care needs of individual patients in the hospice residential facility; and
- (3) notification criteria for licensed nursing staff as defined in the agency policies and procedures.

Statutory Authority G.S. 131E-202.

.0403 JOB DESCRIPTIONS

~~(a) Job descriptions for each hospice staff position shall be established which include qualifications and specific responsibilities.~~

(b) ~~Hospice staff shall be assigned only to duties for which they are trained and competent to perform. Volunteers shall have clearly defined roles and where applicable, meet the same professional standards of practice as required for hospice salaried employees or as defined in Rule .0102 of this Subchapter. Volunteers shall function under the supervision of the coordinator of volunteers as designated in~~

~~Rule .0501(5) of this Subchapter.~~

~~(e) The hospice shall have a written policy implemented which controls the exposure of patients, families and hospice personnel to persons with communicable diseases.~~

Statutory Authority G.S. 131E-202.

SECTION .0500 - SCOPE OF SERVICES

.0501 SERVICE REQUIREMENTS

The governing body shall ensure through policies and implemented procedures that the following services encompassing the essential elements of hospice care be provided, either directly by hospice personnel, or by contractual arrangement:

- (1) Nursing services, available 24 hours a day, by or under the supervision of a registered nurse; provided in accordance with the North Carolina Nurse Practice Act (G.S. Chapter 90, Article 9 9A) and the care plan; and sufficient to ensure that nursing needs of each patient are met.
 - (a) Registered nurse duties include the following as a minimum:
 - (i) regularly assess the nursing needs of the patient;
 - (ii) develop and implement the patient's nursing care plan;
 - (iii) provide nursing services, treatment, and diagnostic and preventive procedures;
 - (iv) initiate nursing procedures appropriate for the patient's care and safety;
 - (v) observe signs and symptoms and report to the physician any unexpected changes in the patient's physical or emotional condition;
 - (vi) teach, supervise, and counsel the patient and family members about providing care for the patient at home; and
 - (vii) supervise and train other nursing service personnel.
 - (b) Licensed practical nurse duties are delegated by and performed under the supervision of a registered nurse. Consistent with the care plan, duties may include:
 - (i) participating in assessment of the patient's condition;
 - (ii) implementing nursing activities, including the administration of prescribed medical treatments and medications;
 - (iii) assisting in teaching the patient and family members about providing care to the patient at home; and
 - (iv) delegating tasks to nurse aides and supervising their performance of tasks within the limitations established in 21 NCAC 36 .0225(d)(2) adopted by reference.
 - (c) The agency must retain current nursing on-call schedules and previous schedules for one year

- and make them available, on request, to the Department.
- (2) Social work services which shall include, but not be limited to ~~assisting with preadmission assessment~~; conducting an assessment of the psychosocial needs of the patient and family with the establishment of goals in the care plan to meet those needs; on-going counseling related to issues of death and dying to the patient and family as needed; and assisting the patient and family in the utilization of appropriate community resources.
- (3) ~~Additional counseling services which shall include dietary, spiritual and any other counseling services desired by the patient and family. Spiritual counseling shall include liaison and consultation with the patient family clergy and other community based clergy. The hospice shall not impose any spiritual value or belief systems on patients and families. All counseling services shall be in accordance with the care plan.~~
- (3) Spiritual counseling shall be offered to each hospice patient/family. The hospice shall assure that:
- (a) no spiritual value or belief system is imposed on patients and families;
- (b) a spiritual assessment is completed on each patient during the admission process; and
- (c) a liaison and consultation is maintained with the patient family clergy or spiritual caregiver and other community based clergy or spiritual caregivers.
- (5) ~~(4) Patient family Volunteer~~ volunteer services for a broad range of activities under the direction of the coordinator of patient family volunteers.
- (6) ~~(5) Inpatient care services, for symptom management or respite care in a licensed hospital, hospital or nursing facility or licensed hospice inpatient facility, unless the hospice operates its own inpatient facility. The hospice shall assure that:~~
- (a) a written agreement, is signed by both providers, which assures that the inpatient facility will provide care and services to hospice patients when necessary;
- (b) the inpatient provider has policies consistent with the needs of hospice patients and their families and will, if necessary, modify policies such as visiting hour restrictions and routine tests, to meet those needs;
- (c) the hospice monthly updated plan of care is furnished to the inpatient provider to ensure that the regimen established is followed as closely as feasible during the inpatient stay;
- (d) all inpatient treatment and services are documented in the inpatient medical record and copy of the discharge summary retained as part of the hospice record; and
- (e) effective transition from one type care to another
- be maintained with continuity of care being the primary goal.
- (6) If the hospice provides or arranges for nurse aide services, those services shall be provided in accordance with physician's orders and interdisciplinary team care plan.
- (a) Nurse aides shall only be assigned duties for which competence has been demonstrated and recorded in appropriate personnel records.
- (b) Nurse aide duties may include, but are not limited to:
- (i) providing or assisting with personal care, i.e. bathing, mouth care, hair and skin care;
- (ii) checking vital signs and observing the patient's condition;
- (iii) assisting with ambulation and limited, routine exercises.
- (c) All nurse aide services shall be performed in accordance with a written assignment prepared by and under the supervision of the registered nurse. Supervision shall include a visit to the home by the nurse at least every two weeks, with or without the aide's presence, to assess the care and services provided. Documentation of supervisory visits shall be maintained in the medical record and include an assessment of the aide's performance in carrying out assigned duties and of the aide's relationship with the patient and family.
- (7) Additional services shall be offered either directly by the hospice or by arrangement when ordered by the physician. These include physical therapy, occupational therapy, nutritional assessment and dietary counseling and other services as needed and ordered by the physician in accordance with the hospice plan of care.
- (4) ~~(8) Bereavement counseling shall be provided offered to family members and others identified in the bereavement plan of care for an appropriate a period of time 12 months after the patient patient's death. to the family following the death of the patient, generally not exceeding one year. The hospice shall assure that:~~
- (a) an assessment of survivor risk factors is completed during the patient's admission to hospice and during the patient's illness;
- (b) the bereavement care plan is established within six weeks after the patient's death;
- (c) the bereavement care plan shall contain information about who shall receive bereavement services and what services will be offered;
- (d) the bereavement care plan is reviewed quarterly at a minimum or more often as needed; and
- (e) discharge from bereavement services before the 12 months expire is justified and documented.

Statutory Authority G.S. 131E-202.

.0502 ADDITIONAL SERVICES

~~When ordered by the attending physician and specified in the care plan, the following services must be provided either directly by the hospice or by contractual arrangement:~~

- ~~(1) physical therapy;~~
- ~~(2) occupational therapy;~~
- ~~(3) speech therapy;~~
- ~~(4) home health aide;~~
- ~~(5) nutritional assessment and dietary counseling; and~~
- ~~(6) other services when ordered by the attending physician in accordance with the care plan to meet unusual needs.~~

~~Exceptions to requirements stated in this Rule shall be approved in writing by the attending physician.~~

Statutory Authority G.S. 131E-202.

.0503 DIRECTION AND COORDINATION OF SERVICES

~~(a) All hospice services shall be provided in accordance with the attending physician's orders and coordinated by the patient or family care coordinator in accordance with the written care plan developed by the interdisciplinary care team.~~

~~(b) Each patient or family accepted for hospice care shall receive written information pertaining to services available, including the means of contacting "on-call" personnel when needed and other information as necessary.~~

Statutory Authority G.S. 131E-202.

.0504 HOME MEDICAL EQUIPMENT AND SUPPLIES

(a) The hospice shall make arrangements for obtaining any necessary supplies, equipment or prosthetic devices needed by the patient in the home, e.g., dressings, catheters, and oxygen. If the agency provides its own equipment and supplies, such services shall be in compliance with G.S. 90-85.22 unless exempted by the law.

(b) The agency shall have policies that address at a minimum:

- (1) Set-up, delivery, electrical safety and environmental requirements for equipment.
- (2) Proper cleaning and storage, preventive maintenance and repair according to manufacturer's guidelines.
- (3) Transportation, tracking and recall of equipment to meet all applicable regulatory requirements.
- (4) Emergency preparedness and backup of systems for equipment or power failure.
- (5) Patient instruction materials for each item of home medical equipment or supplies provided. Appropriate staff shall document the instruction.

Statutory Authority G.S. 131E-202.

.0505 SERVICES ARRANGED WITH OTHER AGENCIES AND INDIVIDUALS

(a) When a hospice makes arrangements for the provision of services by other agencies and individuals; there shall be a written agreement, signed by all both parties prior to the initiation of services to the agreement which includes the following:

- (1) the specific service to be provided, provided;
- (2) the period of time the contract is to be in effect, effect;
- (3) the availability of service, service;
- (4) the financial arrangements, arrangements;
- (5) the provision for supervision of contracted personnel where applicable, applicable;
- (6) the verification that any individual providing services is appropriately licensed or registered as required by statute, statute;
- (7) the assurance that individuals providing services under contractual arrangement meet the same requirements as found in this Subchapter for hospice staff, and staff;
- (8) the provision for the documentation of services provided in the patient's medical record, record; and
- (9) provision for the sharing of assessment and care plan data.

(b) All contracted services shall be provided in accordance with the orders of the attending physician and the care plan.

(c) The hospice shall assure that all contracted services are provided in accordance with the agreement. The agreement shall be reviewed annually and updated as needed.

(d) The hospice shall provide information and training as necessary on the hospice philosophy and concept of care to all agencies and individuals providing contracted services.

(e) Contract providers of direct patient care shall document services on the day of care, and shall submit, every two weeks at a minimum, records of all services provided within that timeframe.

Statutory Authority G.S. 131E-202.

SECTION .0600 - PATIENT/FAMILY CARE

.0601 ACCEPTANCE OF PATIENTS FOR HOSPICE SERVICES

A hospice shall implement and follow written policies governing the acceptance of patient which include at the minimum:

- (1) ~~(a) The hospice shall have written policies which are implemented by~~ Involvement of the interdisciplinary care team in making decisions regarding acceptance of patients and families and the designation of a primary caregiver.
- (2) ~~(b) Prior to acceptance, the hospice shall conduct an initial~~ Initial assessment of the patient prior to

acceptance to ensure that its resources are sufficient to meet the needs of the patient and family.

- (3) ~~(e) Patients accepted shall be under the care of a physician who has determined that hospice care is appropriate, and who agrees to serve as attending physician. Provision for a determination by the patient's physician that hospice care is appropriate and agreement to continue as the attending physician while the patient receives hospice services.~~
- (4) ~~(d) Patient accepted shall sign an informed consent signed by the patient thereby agreeing to hospice services being provided. If the patient is unable to sign, the form may be signed in accordance with Rule .0102(46)(12) of this Subchapter.~~
- (5) Advance notification of at least 48 hours to the patient or family when service provision is to be terminated, except in cases where the patient is in agreement with changes or there is a danger to a patient or staff member.
- (6) Each patient or family accepted for hospice care shall receive written information pertaining to services available, including the means for contacting "on-call" personnel when needed and other information as necessary.

Statutory Authority G.S. 131E-202.

.0602 PROVISIONS OF CARE

~~(a) All care and services provided shall be in accordance with the attending physician's written orders and the care plan. Physician's orders shall be reviewed and signed by the physician at least every two months and maintained in the patient's medical record. Orders shall include, but not be limited to, drugs, treatments and other special care; diet; activity; and other specific therapy services.~~

~~(b) Care and treatments that are required by statute or rule to be rendered by or under the supervision of licensed persons must be carried out by individuals currently licensed, certified, or registered in North Carolina.~~

Statutory Authority G.S. 131E-202.

.0603 HOME HEALTH AIDE SERVICES

~~(a) If the hospice provides or arranges for home health aide services, those services shall be provided in accordance with physician's orders and interdisciplinary team care plan.~~

~~(b) Home health aides shall only be assigned duties for which competence has been demonstrated and recorded in appropriate personnel records.~~

~~(c) Home health aide duties may include, but are not limited to:~~

- ~~(1) providing or assisting with personal care, i.e. bathing, mouth care, hair and skin care;~~
- ~~(2) checking vital signs and observing the patient's condition;~~
- ~~(3) assisting with ambulation and limited, routine exercises.~~

~~(d) All home health aide services shall be performed in accordance with a written assignment prepared by and under the supervision of the registered nurse. Supervision shall include a visit to the home by the nurse at least every two weeks, with or without the aide's presence, to assess the care and services provided. Documentation of supervisory visits shall be maintained in the medical record and include an assessment of the aide's performance in carrying out assigned duties and of the aide's relationship with the patient and family.~~

Statutory Authority G.S. 131E-202.

.0604 PATIENT'S RIGHTS AND RESPONSIBILITIES

(a) A hospice agency must provide each patient with a written notice of the patient's rights and responsibilities in advance of furnishing care to the patient or during the initial evaluation visit before the initiation of services. The agency must maintain documentation showing that each patient has received a copy of his rights and responsibilities.

(b) The notice must include at a minimum the patient's right to:

- (1) be informed and participate in the patient's plan of care;
- (2) voice grievances about the patient's care and not be subjected to discrimination or reprisal for doing so;
- (3) confidentiality of the patient's records;
- (4) be informed of the patient's liability for payment for services;
- (5) be informed of the process for acceptance and continuance of service and eligibility determination;
- (6) accept or refuse services;
- (7) be informed of the agency's on-call service;
- (8) be advised of the agency's procedures for discharge; and
- (9) be informed of supervisory accessibility and availability.

(c) A hospice agency shall provide all patients with a business hours telephone number for information, questions or complaints about services provided by the agency. The agency shall also provide the Division of Facility Services' complaints number and the Department of Human Resources Careline number. The Division of Facility Services shall investigate all allegations of non-compliance with the rules.

(d) A hospice agency shall initiate an investigation within 72-hours of complaints made by a patient or their family. Documentation of both the existence of the complaint and the resolution of the complaint shall be maintained by the agency.

Statutory Authority G.S. 131E-202.

.0605 HOME CARE

If a hospice agency wishes to provide home care services

as defined in G.S. 131E-136 and meets the requirements of 10 NCAC 3L and the standards for the specific home care services applied for, the hospice agency may apply for a home care license. The extent of review shall be at the discretion of the Department.

Statutory Authority G.S. 131E-202.

SECTION .0700 - PATIENT/FAMILY CARE PLAN

.0701 CARE PLAN

The hospice shall ~~have~~ develop and implement policies and procedures which ensure that a written care plan is developed and maintained for each patient and family. The plan shall be established by the interdisciplinary care team in accordance with the orders of the attending physician and be based on the complete assessment of the patient's and family's medical, psychosocial and spiritual needs. The patient and family care coordinator shall have the primary responsibility for assuring the implementation of the patient's care plan. The plan shall include the following:

- (1) patient's diagnosis and prognosis;
- (2) identification of problems or needs and the establishment of appropriate goals;
- (3) types and frequency of services required to meet the goals; and
- (4) identification of personnel and disciplines responsible for each service.

The care plan shall be reviewed by appropriate interdisciplinary care team members and updated at least once monthly. The interdisciplinary care team and other appropriate personnel shall meet at least once every two weeks for the purpose of care plan review and staff support. Minutes shall be kept of these meetings that include the date, names of those in attendance and the names of the patients discussed. Additionally, entries shall be recorded in the medical records of those patients whose care plans are reviewed.

Statutory Authority G.S. 131E-202.

.0702 CONTENT OF PLAN

~~The plan shall include the following:~~

- (1) ~~patient's diagnosis and prognosis;~~
- (2) ~~identification of problems or needs and the establishment of appropriate goals;~~
- (3) ~~types and frequency of services required to meet the goals; and~~
- (4) ~~identification of persons and disciplines responsible for each service.~~

Statutory Authority G.S. 131E-202.

.0703 REVIEW OF PLAN AND TEAM MEETINGS

(a) ~~The care plan shall be reviewed by appropriate interdisciplinary care team members and updated at least once monthly.~~

~~(b) The interdisciplinary care team and other appropriate personnel shall meet on a frequent and regular basis, at least once every two weeks, for the purpose of care plan review and staff support. Minutes shall be kept of these meetings. Additionally, entries shall be recorded in the medical records of those patients whose care plans are reviewed.~~

Statutory Authority G.S. 131E-202.

SECTION .0800 - PHARMACEUTICAL AND MEDICAL TREATMENT ORDERS AND ADMINISTRATION

.0801 PHARMACEUTICAL AND MEDICAL TREATMENT ORDERS

(a) The hospice shall ~~have~~ develop and implement written policies and procedures for the administration of drugs and treatments including controlled substances.

(b) The original order for drugs and treatments shall be signed by the attending physician and incorporated in the patient's medical record. Faxed orders shall be followed with a hard copy.

(c) Verbal orders shall be given to a licensed ~~nurse, nurse or~~ physician or other person authorized by state law to implement orders, recorded and signed by the person receiving it and countersigned by the prescribing physician within ~~one week~~ 30 days. Care may commence in the interim with evidence of a verbal order.

(d) Changes in drugs and treatments shall be signed by the physician and incorporated in the medical record within ~~one week~~ 30 days.

(e) Each patient's drug regimen shall be monitored to assure optimal symptom control in accordance with physician's orders. Individuals qualified to perform such reviews are registered nurses, nurse (RN) registered by the N.C. Board of Nursing and pharmacists (RPh) registered by the N. C. Board of Pharmacy licensed physicians, nurse practitioners, and physician's assistants approved to practice in North Carolina. The agency shall designate one or the other or both to carry out this responsibility.

Statutory Authority G.S. 131E-202.

.0802 ADMINISTRATION OF PHARMACEUTICALS

(a) In a private home, the administration of prescribed medications is the primary responsibility of the patient, family member or caregiver. Where special skills or knowledge are required, medication shall be administered by a licensed registered nurse, licensed practical nurse with training specified by the North Carolina Board of Nursing, or physician.

(b) In a licensed hospice residence, medications shall be administered by a licensed nurse. Exceptions to this requirement are as follows:

- (1) persons who hold statutory authority to administer medications;
- (2) hospice patients, their families or caregivers who

provide personal care to individuals whose health care needs are incidental to the personal care required;

- (3) administration of oral nutritional supplements;
- (4) applications of non-systemic, topical skin preparations which have local effects only provided that ongoing, periodic assessment of any skin lesion present is carried out by a person licensed to make such assessments; and
- (5) administration of commonly used cleansing enema solutions or suppositories with local effects only.

(c) In a hospice inpatient unit or freestanding hospice inpatient facility, medications shall be administered by a licensed nurse, in accordance with the agency's, policies or in accordance with the contractual agreement between the hospice and the facility.

(d) The administration of all medications must be documented in the patient's record by the licensed nurse, including those medications administered by the licensed nurse and those administered by the patient family or, caregiver, as ordered by the physician.

(e) The provision of medications shall be specified in the agency's policies or in accordance with the contractual agreement between the hospice and the facility.

(f) A hospice agency or facility shall develop and implement written policies and procedures to govern the procurement, storage, administration and disposal of all drugs and biologicals in accordance with federal and state laws.

(g) Medications used in the home are the property of the patient and family and shall be appropriately stored. Hospice staff shall encourage disposal of unused or discontinued medications. Witnessed or reported disposal of medications shall be documented by hospice staff in the patient's record.

(h) If the agency maintains an emergency drug kit, handling shall be in accordance with the North Carolina Board of Pharmacy 21 NCAC 46 .1400.

Statutory Authority G.S. 131E-202.

.0803 DRUG DISPOSITION

~~(a) The hospice shall not keep any legend drugs or pharmaceuticals on its licensed premises, unless it is a freestanding hospice, hospice residence, hospice inpatient unit, or a part of an inpatient facility licensed under G.S. Chapter 131E, Article 5 or 6.~~

~~(b) Medications are the property of the patient and family and shall be appropriately stored in the home.~~

~~(c) Hospice staff shall encourage disposal of unused or discontinued medications.~~

Statutory Authority G.S. 131E-202.

SECTION .0900 - MEDICAL RECORDS

.0901 CONTENT OF MEDICAL RECORD

(a) The hospice shall ~~have~~ develop and implement policies and procedures ~~implemented~~ to ensure that a medical record is maintained for each patient and is made available for licensure inspection unless the patient, who has been so informed, objects to such inspection in writing. If the patient is not able to approve or disapprove the release of such information for inspection, the patient's legal guardian may make the decision and so indicate in writing.

(b) The record shall contain pertinent past and current medical and social data and include the following information.

- (1) identification data (name, address, telephone, date of birth, sex, marital status);
- (2) name of next of kin or legal guardian;
- (3) names of other family members;
- (4) religious preference and church affiliation and ~~elergy~~ spiritual caregiver if appropriate;
- (5) diagnosis, as determined by attending physician;
- (6) authorization from attending physician for hospice care;
- (7) source of referral;
- (8) initial assessments, including physical, social, spiritual, environmental, and bereavement;
- (9) consent for care form;
- (10) physician's orders for drugs, treatments and other special care, diet, activity and other specific therapy services;
- (11) care plan;
- (12) clinical notes containing a record of all professional services provided directly or by contract with entries signed by the individual providing the services;
- (13) ~~home health nurse~~ aide and hospice caregiver notes describing activities performed and pertinent observations;
- (14) a copy of the signed patient's rights form or documentation of its delivery;
- (14) (15) patient family volunteer notes, as applicable, indicating type of contact, activities performed and time spent;
- (15) (16) discharge summary to include services provided, or reason for discharge if services are terminated prior to the death of the patient; and
- (16) (17) bereavement counseling notes.

Statutory Authority G.S. 131E-202.

.0902 RECORD CONTENT, HANDLING AND RETENTION

(a) The hospice agency shall ~~have~~ develop and implement written policies governing the content, ~~and handling and retention~~ of patient records. ~~The hospice shall assure that medical records are kept confidential and secure on the licensed premises and retained for a period of not less than five years.~~

(b) The agency shall maintain a patient record for each patient. Each page of the patient record shall have the

patient's name. All entries in the record shall reflect the actual date of entry. Reference to any activity which occurred on a date prior to the date of entry shall be identified as a late or out of sequence entry. A system for maintaining originals and copies shall be described in the agency policies and procedures.

(c) The agency shall assure that originals of patient records are kept confidential and secure on the licensed premises unless in accordance with Rule .0209 of this Subchapter, or subpoenaed by a court of legal jurisdiction, or to conduct an evaluation as required in Rule .1001 of this Subchapter.

(d) If a record is removed to conduct an evaluation, the record shall be returned to the agency premises within five working days. The agency shall maintain a sign out log that includes to whom the record was released, patient's name and date removed.

(e) A copy of the patient record for each patient must be readily available to the hospice staff providing services or managing the delivery of such services.

(f) Patient records shall be retained for a period of not less than three years from the date of discharge of the patient, unless the patient is a minor in which case the record must be retained until five years after the patient's eighteenth birthday. If a minor patient dies, as opposed to being discharged for other reasons, the minor's records must be retained at least five years after the minor's death. When an agency ceases operation, the Department shall be notified in writing where the records will be stored for the required retention period.

Statutory Authority G.S. 131E-202.

SECTION .1000 - EVALUATION

.1001 EVALUATION REQUIRED

(a) The hospice shall ~~have~~ develop and implement policies and a written plan for the implementation of a comprehensive assessment at least annually of its overall program and performance. The quality and appropriateness of care provided shall be assessed with the findings used to verify policy implementation, to identify problems and to establish problem resolution and policy revision as necessary.

(b) The hospice shall determine what individuals will carry out the evaluation. Representatives of the governing body, hospice staff, the interdisciplinary care team, and other appropriate professionals may be used.

(c) The evaluation shall include, as a minimum, a review of all policies and procedures and a medical record review.

(d) Documentation of the evaluation shall include the names and qualifications of the persons carrying out the evaluation, the criteria and methods used to accomplish it, and the action taken by the agency as a result of the findings.

Statutory Authority G.S. 131E-202.

.1002 DOCUMENTATION OF EVALUATION

~~Documentation of the evaluation required in Rule .1001 of this Section must include:~~

- ~~(1) criteria and methods used to accomplish it;~~
- ~~(2) names and credentials of individuals who did the evaluation; and~~
- ~~(3) action taken as a result of the findings, including any subsequent policy change.~~

Statutory Authority G.S. 131E-202.

SECTION .1100 - HOSPICE RESIDENTIAL CARE

.1102 HOSPICE RESIDENCE STAFFING

(a) There shall be trained hospice caregivers on duty 24 hours a day. A registered nurse shall be continuously available, for consultation and direct participation in nursing care. The registered nurse shall be on site when required to perform duties specified in the Nurse Practice Act. Supervision shall be provided by the Patient and Family Care Coordinator who may delegate this responsibility to the registered nurse on call.

(b) There shall be at least two staff on duty at all times.

(c) All staff, including patient family volunteers, counselors and clergy, shall complete training specific to dealing with the terminally ill and their families.

(d) Nurse aides employed to provide direct care shall be supervised by licensed nurses.

(e) Interdisciplinary team services shall be provided in accordance with the hospice plan of care.

Statutory Authority G.S. 131E-202.

.1113 PLANS AND SPECIFICATIONS

(a) When construction or remodeling is planned, final working drawings and specifications must be submitted by the owner or ~~his~~ the owner's appointed representative to the Department of Human Resources, Division of Facility Services for review and approval. Schematic drawings and preliminary working drawings should be submitted by the owner prior to the required submission of final working drawings. The Department will forward copies of each submittal to the Department of Insurance and Division of Health Services for review and approval. Three copies of the plans shall be provided at each submittal.

(b) Construction work should not be commenced until written approval has been given by the Department. Approval of final plans and specifications shall expire one year from the date granted unless a contract for the construction has been signed prior to the expiration date.

(c) If an approval expires, a renewed approval shall be issued provided revised plans meeting all current regulations, codes, and standards are submitted.

(d) Completed construction must conform to the minimum standards established in these Rules.

(e) The owner or designated agent shall notify the Department when actual construction starts and at points

when construction is 75 percent and 90 percent complete and upon final completion, so that periodic and final inspections can be performed.

(f) The owner or designated agent shall submit for approval by the Department all alterations or remodeling changes which affect the structural integrity of the building, functional operation, fire safety or which add beds or facilities over those for which the facility is licensed.

Statutory Authority G.S. 131E-202.

.1116 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

The physical plan requirements for each hospice residential facility or unit shall be applied as follows:

- (1) New construction shall comply with the requirements of Section .1100 of this Subchapter;
- (2) Existing buildings shall meet licensure and code requirements in effect at the time of construction, alteration or modification;
- (3) New additions, alterations, modifications, and repairs shall meet the technical requirements of Section .1100 of this Subchapter; however, where strict conformance with current requirements would be impracticable, the authority having jurisdiction may approve alternative measures where the facility can demonstrate to the Department's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility;
- (4) Rules contained in Rule .1109 of this Section are minimum requirements and not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
- (5) Equivalency: Alternate methods, procedures, design criteria, and functional variations from the physical plant requirements, because of extraordinary circumstances, new programs, or unusual conditions, may be approved by the authority having jurisdiction when the facility can effectively demonstrate to the Department's satisfaction, that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility; and
- (6) Where rules, codes, or standards have any conflict, the most stringent requirement shall apply.

Statutory Authority G.S. 131E-202.

SECTION .1200 - HOSPICE INPATIENT CARE

.1202 ADDITIONAL STAFFING REQUIREMENTS FOR HOSPICE INPATIENT UNITS

(a) All nursing services shall be provided under the supervision of a registered nurse.

(b) There shall be sufficient nursing personnel on duty to

meet patients' total nursing needs. In place of the staffing requirements in 10 NCAC .1102(a) and (b), one registered nurse and one additional staff person shall be on duty at all times.

(c) Considerations for determining sufficiency of nursing personnel include, but are not limited to:

- (1) number of patients;
- (2) specific patient care requirements;
- (3) family care needs; and
- (4) availability of support from other interdisciplinary team members.

(d) Hospice caregivers shall not provide care to hospice inpatients in a combined hospice inpatient and residential facility or unit.

Statutory Authority G.S. 131E-202.

.1204 ADDITIONAL PATIENT CARE AREA REQUIREMENTS FOR HOSPICE INPATIENT UNITS

(a) The floor area of a single bedroom shall not be less than 100 square feet and the floor area of a room for more than one bed shall not be less than 80 square feet per bed. The 80 square feet and 100 square feet requirements shall be exclusive of closets, toilet rooms, vestibules or wardrobes.

(b) The total space set aside for dining, recreation and other common uses shall not be less than 30 square feet per bed. Physical therapy and occupational therapy space shall not be included in this total.

(c) A toilet room shall be directly accessible from each patient room and from each central bathing area without going through the general corridor. One toilet room may serve two patient rooms but not more than eight beds. The lavatory may be omitted from the toilet room if one is provided for each 15 beds not individually served. ~~There shall be at least one bathtub accessible on three sides and one shower provided for each 60 beds or fraction thereof.~~ There shall be a wheelchair and stretcher accessible central bathing area for staff to bathe a patient who cannot perform this activity independently. There shall be at least one such area per each level in a multi-level facility.

(d) For each nursing unit or fraction thereof on each floor, the following shall be provided:

- (1) an adequate medication preparation area with counter, sink with four-inch handles, medication refrigerator, eye-level medication storage, cabinet storage, and double-locked narcotic storage room, located adjacent to the nursing station or under visual control of the nursing station;
- (2) a clean utility room with counter, sink with four-inch handles, wall and under counter storage;
- (3) a soiled utility room with counter, sink with four-inch handles, wall and under counter storage, a flush-rim clinical sink or water closet

with a suitable device for cleaning bedpans and a suitable means for washing and sanitizing bedpans and other utensils;

- (4) a nurses' toilet and locker space for personal belongings;
 - (5) an audiovisual nurse-patient call system arranged to ensure that a patient's call in the facility is noted at a staffed station;
 - (6) a soiled linen storage area;
 - (7) a clean linen storage room area; and
 - (8) at least one janitor's closet.
- (e) Dietary and laundry each must have a janitor's closet.
- (f) Stretcher and wheelchair storage shall be provided.
- (g) Bulk storage shall be provided at the rate of five square feet of floor area per bed.
- (h) Office space shall be provided for persons with administrative responsibilities for the unit.

Statutory Authority G.S. 131E-202.

.1212 APPLICATION OF PHYSICAL PLANT REQUIREMENTS

The physical plant requirements for each hospice inpatient facility or unit shall be applied as follows:

- (1) New construction shall comply with the requirements of Section .1200 of this Subchapter;
- (2) Existing buildings shall meet licensure and code requirements in effect at the time of construction, alteration or modification;
- (3) New additions, alterations, modifications, and repairs shall meet the technical requirements of Section .1100 of this Subchapter; however, where strict conformance with current requirements would be impracticable, the authority having jurisdiction may approve alternative measures where the facility can demonstrate to the Department's satisfaction that the alternative measures do not reduce the safety or operating effectiveness of the facility;
- (4) Rules contained in Rule .1210 of this Section are minimum requirements and not intended to prohibit buildings, systems or operational conditions that exceed minimum requirements;
- (5) Equivalency: Alternate methods, procedures, design criteria, and functional variations from the physical plant requirements, because of extraordinary circumstances, new programs, or unusual conditions, may be approved by the authority having jurisdiction when the facility can effectively demonstrate to the Department's satisfaction, that the intent of the physical plant requirements are met and that the variation does not reduce the safety or operational effectiveness of the facility; and
- (6) Where rules, codes, or standards have any conflict, the most stringent requirement shall apply.

Statutory Authority G.S. 131E-202.

Notice is hereby given in accordance with G.S. 150B-21.2 that the Commission for Mental Health, Developmental Disabilities and Substance Abuse Services intends to amend rules cited as 10 NCAC 18D .0209 and 18F .0115 - .0117.

Proposed Effective Date: January 1, 1996.

Instructions on How to Demand a Public Hearing (must be requested in writing within 15 days of notice): Any individual who wishes to demand a public hearing should contact Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603, (919-733-4774) within 15 days of this Notice.

Reason for Proposed Action:

10 NCAC 18D .0209 - Legislation in the recent General Assembly Session included an amendment to Article 3 (Clients' Rights) of the Mental Health, Developmental Disabilities and Substance Abuse Act. G.S. 122C-53(i), which deals with certain exceptions to the confidentiality rules, formerly provided that a facility should disclose confidential information relating to a client to an attorney upon the client's request. The former statute did not distinguish between minors and adults, nor did it address the client's competency status. To prevent the current Rule from being in conflict with the revised Statute, it is necessary to amend this Rule.

10 NCAC 18F .0115 - .0117 - Current Rules apply to any qualified mental health professional seeking registration as a forensic evaluator by the Division. The proposed revision is to expand the Rules to include a qualified substance abuse professional seeking registration as a forensic evaluator.

Comment Procedures: Any interested person may submit written comments and state the Rules to which the comments are addressed. These comments will be accepted through November 15, 1995. Thirty-five copies of the comments should be forwarded to Charlotte Tucker, Division of Mental Health, Developmental Disabilities and Substance Abuse Services, 325 N. Salisbury Street, Raleigh, NC 27603.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 18 - MENTAL HEALTH: OTHER PROGRAMS

SUBCHAPTER 18D - CONFIDENTIALITY RULES

SECTION .0200 - RELEASE OF CONFIDENTIAL INFORMATION WITH CONSENT

.0209 PERSONS WHO MAY SIGN CONSENT FOR RELEASE

The following persons may sign a consent for release of confidential information:

- (1) a competent adult client;
- ~~(2) an adult client who has been adjudicated incompetent, when consenting for release of information to an attorney;~~
- (2) ~~(3)~~ the client's legally responsible person;
- (3) ~~(4)~~ a minor client ~~clients~~ under the following conditions:
 - (a) when seeking services for venereal disease and other diseases reportable under G.S. 130A-134, pregnancy, abuse of controlled substances or alcohol, or emotional disturbances under G.S. 90-21.5;
 - (b) when married or divorced;
 - (c) when emancipated by a decree issued by a court of competent jurisdiction;
 - (d) when a member of the armed forces; or
 - ~~(e) when consenting for release of information to an attorney; and~~
- (4) ~~(5)~~ personal representative of a deceased client if the estate is being settled or next of kin of a deceased client if the estate is not being settled.

Statutory Authority G.S. 28A-13.3; 90-21.5; 122C-52; 122C-53; 131E-67; 143B-147.

SUBCHAPTER 18F - PROGRAM SUPPORT STANDARDS

SECTION .0100 - TRAINING AND REGISTRATION OF FORENSIC EVALUATORS

.0115 SCOPE

(a) The purpose of Rules .0115 through .0122 of this Section is to specify the requirements that shall be met to be registered as a forensic evaluator by the Division of Mental Health, Developmental Disabilities and Substance Abuse Services.

(b) The provisions of Rules .0115 through .0122 of this Section apply to any qualified mental health professional or qualified substance abuse professional seeking registration as a forensic evaluator by the Division.

Statutory Authority G.S. 15A-1002; 143B-147.

.0116 DEFINITIONS

For the purposes of Rules .0115 through .0122 of this Section the following terms shall have the meanings indicated:

- (1) "Forensic Evaluation" means an examination ordered by the court to determine if the defendant has the capacity to proceed to trial, needs further treatment at an inpatient facility or further evaluation at the Pre-Trial Evaluation Center.

~~(2) "Qualified Mental Health Professional" means a qualified professional who meets the appropriate qualifications as referenced in 10 NCAC 181 .0120(71) in the Standards for Area Programs (Division publication APSM 35-1) and defined in 10 NCAC 14K .0103(68) "Licensure Rules for Mental Health, Mental Retardation, and Other Developmental Disabilities and Substance Abuse Facilities" (APSM 40-2).~~

(2) (3) "Pre-Trial Evaluation Center" means the forensic unit at Dorothea Dix Hospital.

(3) "Qualified Mental Health Professional" means the same as defined in 10 NCAC 14K .0103(c) contained in Division publication, Licensure Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities, APSM 40-2.

(4) "Qualified Substance Abuse Professional" means the same as defined in 10 NCAC 14K .0103(c) contained in Division publication, Licensure Rules for Mental Health, Developmental Disabilities and Substance Abuse Facilities, APSM 40-2.

Statutory Authority G.S. 15A-1002; 143B-147.

.0117 ELIGIBILITY FOR TRAINING

(a) To be eligible for training as a forensic evaluator the applicant shall:

- (1) be a qualified mental health professional or a qualified substance abuse professional;
- (2) be an employee of, or work under contract with, an area program; and
- (3) have his name submitted as an applicant for the training and registration program by the area director.

(b) The area program shall verify that the applicant meets the appropriate standards for a qualified mental health professional that are referenced in Rule ~~.0116(2)~~ .0116 of this Section.

Statutory Authority G.S. 15A-1002; 143B-147.

Notice is hereby given in accordance with G.S. 150B-21.2 that DHR/Division of Services for the Blind/Commission for the Blind intends to amend rules cited as 10 NCAC 19G .0501 - .0502, .0603, .0803, .0806, .0817, .0823 and adopt rules cited as 10 NCAC 19G .0606 - .0612.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 10:00 am - 12:00 noon on October 31, 1995 at the Division of Services for the Blind, Governor Morehead School Campus, Fisher Building Conference Room, 309 Ashe Avenue, Raleigh, NC 27606.

Reason for Proposed Action: 10 NCAC 19G .0606 - .0612 - *To establish a priority order for service delivery if and when the Division has insufficient resources to serve all eligible individuals.* 10 NCAC 19G .0501 - .0502, .0603, .0803, .0806, .0817, .0823 - *To amend existing rules to comply with Public Law 102-569 (Rehabilitation Act of 1973 as amended).*

Comment Procedures: Any interested person may present his/her comments either in writing at the hearing or orally at the hearing. Any person may request information, permission to be heard, or copies of the proposed regulations, by writing or calling John DeLuca, Division of Services for the Blind, 309 Ashe Avenue, Raleigh, NC 27606, 919-733-9822.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

CHAPTER 19 - SERVICES FOR THE BLIND

SUBCHAPTER 19G - VOCATIONAL REHABILITATION

SECTION .0500 - ECONOMIC NEED

.0501 BENEFITS

(a) The Services for the Blind will give full consideration to any benefit available to the ~~handicapped~~ individual with a visual disability by way of pension, compensation, or insurance to meet, in whole or in part, the cost of any vocational rehabilitation services provided to the individual except the following:

- (1) evaluation, including diagnostic and related services;
- (2) counseling and guidance;
- (3) placement.

(b) When and to the extent that an individual is eligible for such benefits, such benefits will be utilized insofar as they are adequate, timely, or otherwise properly conducive to achieving the rehabilitation objective of the individual. Such benefits would include but need not be limited to:

- (1) Medicare, Medicaid hospital and physician's services plans in relation to physical restoration services; and
- (2) workmen's compensation, veterans' benefits, SSI, private insurance benefits, old age and survivors disability insurance benefits and unemployment compensation in relation to basic maintenance.

Authority G.S. 111-28; 34 C.F.R. 361.47.

.0502 ECONOMIC NEEDS POLICIES

(a) The Services for the Blind will establish economic need for each ~~client~~ eligible individual either simultaneously with or within a reasonable time prior to the provision of

those services for which the Division requires a needs test. This needs test is in accordance with S.L. 1989, c. 500, s. 43.

(b) The Division of Services of the Blind will furnish the following services not conditioned on economic need:

- (1) ~~evaluation of rehabilitation potential (including diagnostic and related services; an assessment for determining eligibility and vocational rehabilitation needs by qualified personnel, including, if appropriate, an assessment by personnel skilled in rehabilitation technology;~~
- (2) counseling, guidance, and referral;
- (3) tuition and supplies for publicly operated ~~sheltered workshops;~~ Community Rehabilitation Program training;
- (4) tuition and ~~fees;~~ fees for:
 - (A) community college/college parallel and vocational programs up to the catalog rate;
 - (B) post-secondary education up to the maximum rate charged for the public university system;
 - (C) The Division requires all eligible individuals applying for training programs listed in Parts (b)(4)(A) and (B) of this Rule to first apply for all eligible grants and financial aid; and
 - (D) The Division may grant an exception to the rate for tuition and required fees for post-secondary education specified in Part (b)(4)(B) of this Rule when necessary to accommodate the special training needs of certain severely disabled individuals who must be enrolled in high-cost, special programs designed for severely physically disabled students;
- (5) interpreter services for the deaf;
- (6) reader services, rehabilitation teaching services, and orientation and mobility services of the blind;
- (7) recruitment and training services to provide new employment opportunities in rehabilitation, health, welfare, public safety, law enforcement and other appropriate public service employment;
- (8) job search, job placement in suitable employment; assistance and job retention services;
- (9) DSB Rehabilitation Center services including transportation and training supplies contingent on an individual's participation in the center program;
- (10) extended evaluation services;
- (11) diagnostic transportation;
- (12) on-the-job training;
- (13) training and associated maintenance and transportation costs for Business Enterprises Program trainees;
- (14) upward mobility training and associated maintenance and transportation costs for Business Enterprises Program trainees; ~~and~~
- (15) equipment and initial stocks and supplies for

state-owned (Randolph-Sheppard) vending ~~stands~~ stands;

(16) Supported Employment Services;

(17) On-the-job and other related personal assistance services provided while an individual with a disability is receiving vocational rehabilitation services; and

(18) referral and other services designed to assist individuals with disabilities in securing needed services from other agencies through agreements developed under Section 101(a)(11) of the Act, if such services are not available under this Act.

(c) The following services will be provided by the Division of Services for the Blind and conditioned on economic need:

- (1) Physical and mental restoration services (medical services other than diagnostic);
- (2) maintenance for additional costs incurred while participating in rehabilitation;
- (3) transportation, except where necessary in connection with determination of eligibility or nature and scope of services;
- (4) services to members of a ~~handicapped~~ disabled individual's family necessary to the adjustment or rehabilitation of the ~~handicapped individual~~ individual with a disability;
- (5) telecommunications, sensory, and other technological aids and devices;
- (6) post-employment services necessary to assist ~~handicapped~~ individuals with visual disabilities to ~~maintain~~ maintain, regain or advance in suitable employment except for those services not conditioned on economic need listed in (b) of this Rule;
- (7) occupational licenses;
- (8) tools, equipment, and initial stocks (including livestock) and supplies; and necessary shelters in connection with the foregoing items;
- (9) expenditures for short periods of medical care for acute conditions arising during the course of vocational rehabilitation, which if not cared for, will constitute a hazard to the achievement of the vocational rehabilitation objective;
- (10) books and other training materials;
- (11) Rehabilitation Technology Services; and
- (12) ~~(11)~~ other goods and services not contraindicated by the Act, which can reasonably be expected to benefit a ~~handicapped~~ an individual with a disability in terms of his employability.

(d) The Division of Services for the Blind will maintain a written standard for measuring the financial need of ~~clients~~ individuals with respect to normal living requirements and for determining their financial ability to meet the cost of necessary rehabilitation services, and for determining the amount of agency supplementation required to procure the necessary services.

(e) The policies will be reasonable and will be applied

uniformly so that equitable treatment is accorded all ~~handi-~~ ~~eapped~~ individuals with visual disabilities in similar circumstances.

Authority G.S. 111-28; 34 C.F.R. 361.47; P.L. 102-569, Section 103.

SECTION .0600 - APPLICANTS

.0603 ORDER OF SELECTION FOR SERVICES

All necessary vocational rehabilitation services will be provided without delay to all ~~handicapped~~ individuals determined to be eligible for services; however, if a situation should develop under which vocational rehabilitation services cannot be extended without delay to all eligible ~~clients~~, a plan amendment will be submitted, setting forth ~~criteria for individuals~~, because the Division does not have the financial or staff resources to serve all eligible individuals who apply for services, an order of selection of ~~eligible clients~~ for provision of services, shall be implemented. Rules .0606, .0607, and .0608 in this Section set out the order of selection for services that shall be followed by the Division of Services for the Blind Rehabilitation Program. The Rules do not apply to the Independent Living Rehabilitation Program. As used in this order of selection, the following terms have the meaning specified:

- (1) "Division" means the Division of Services of the Blind of the Department of Human Resources.
- (2) "Division Director" or "Director" means the Director of the Division of Services for the Blind.
- (3) "Eligible individual" means an applicant whom the Division has determined is an individual with a visual disability who requires Vocational Rehabilitation Services to prepare for, enter, engage in, or retain gainful employment.
- (4) "Individual with a severe disability" has the meaning specified in P.L. 102-569, Section 7(15) which is incorporated by reference.
- (5) "Individual with the most severe disability" means an individual with a severe disability whose impairment seriously limits two or more functional capacities in terms of an employment outcome.
- (6) "Functional capacity" means the ability to perform in the following areas:
 - (a) mobility;
 - (b) communication;
 - (c) self-care;
 - (d) self-direction;
 - (e) interpersonal skills;
 - (f) work skills; and
 - (g) work tolerance.

The Section of the Public Law incorporated by reference in this Rule shall automatically include any later amendments thereto as allowed by G.S. 150B-21.6. Copies of the Section of the Public Law so incorporated may be obtained at no cost from the Division.

Authority G.S. 111-28; 150B-21.6; 34 C.F.R. 361.36; P.L. 102-569, Section 7(15) and Section 101(a)(5)(A).

.0606 IMPLEMENTATION OF ORDER OF SELECTION

(a) The Division of Services for the Blind shall make a determination of the necessity for implementing the order of selection specified in Rule .0603.

(b) When the Division Director determines that the order of selection shall be implemented, it shall be implemented on a statewide basis; and the Director shall determine the priority categories which can be served within available resources.

(c) The Division Director shall notify Division staff of the decision to implement an order of selection.

(d) The Division shall provide written notification to all cooperative programs with which it has written agreements and all vendors of services as appropriate of its decision to implement an order of selection.

Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A).

.0607 DETERMINATION OF ORDER OF SELECTION PRIORITY

(a) The Division of Services for the Blind shall provide written notification to all applicants for services at the time of application of either:

- (1) the existing order of selection as set out in this sub-section; or
- (2) that an order of selection will be implemented if or when it is determined the Division has insufficient resources to serve all applicants who are determined eligible.

(b) The Division shall determine each individual's priority category at the time the individual is determined eligible for service. The individual shall be placed in the highest category (beginning with Category One) for which he/she qualifies.

(c) The Division shall notify in writing each eligible individual of his/her priority classification at the same time the eligibility notification is provided.

(d) The Division shall change an individual's priority classification immediately if there are changes in the individual's circumstances that warrant a change. The Division shall notify the individual in writing of any change in priority classification.

(e) The individual's record of service shall contain documentation of the rationale for the priority category assignment.

Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A).

.0608 PRIORITY CATEGORIES

(a) The priority categories for the order of selection for services for eligible individuals are as follows:

- (1) Category One - Individuals with the most severe disabilities;
- (2) Category Two - Individuals with a severe disability; and
- (3) Category Three - Individuals with a non-severe disability.

(b) The Division shall follow the provisions of P.L. 102-569, Section 101(a)(13)(B) which is incorporated by reference regarding public safety officer when applicable in its order of selection. This incorporation by reference shall automatically include any later amendments to the cited Section of the Public Law as allowed by G.S. 150B-21.6. A copy of the cited Section of the Public Law may be obtained at no cost from the Division.

(c) An individual's priority category is determined when eligibility is determined as outlined in Rule .0607.

Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A).

.0609 PROCEDURES

(a) Eligible individuals who are already receiving services under an Individualized Written Rehabilitation Program (IWRP) at the time the order of selection is implemented shall not be subject to the order of selection process. Their rehabilitation programs will continue until their records of service are closed.

(b) The Division shall serve individuals in Priority Category One first and individuals in the other priority categories in descending order from Priority Category Two down through Priority Category Three according to the availability of resources.

(c) Eligible individuals for whom rehabilitation services have not been planned under an Individualized Written Rehabilitation Program prior to the implementation of the order of selection and whose classification is below the categories approved for service shall be placed in a "waiting" status. They shall remain in the "waiting" status until their priority category is opened for services.

(d) When the order of selection is implemented, all individuals whose classification will mean they will be placed in a "waiting" status shall be notified in writing of their status. When services are made available to any category in which individuals have been in a "waiting" status, the Division shall notify all persons in that priority category that their rehabilitation program can be developed.

(e) Individuals determined eligible after the order of selection for service is implemented shall receive services if they are classified in the categories being served or shall be placed in a "waiting" status if their classification places them in a category not currently being served.

Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A).

.0610 POST EMPLOYMENT SERVICES

When a former recipient of services requires post-employ-

ment services and is otherwise eligible for such services, the services shall be provided without regard for the order of selection.

Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A).

.0611 CASE FINDING AND REFERRAL

Case finding efforts shall not be modified because of an order of selection. The Division has a continued responsibility to make the public and referral sources aware of the services it has to offer eligible individuals with disabilities. Referral sources shall be informed of an existing order of selection or of the potential of an order of selection being implemented, but they shall be reassured that this should not discourage referrals or applications.

Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A).

.0612 THIRD-PARTY FUNDING ARRANGEMENTS

The Division shall ensure that its funding arrangements for providing services, including third-party arrangements and establishment grants, are consistent with the order of selection.

Authority G.S. 143-545A; 143-546A; P.L. 102-569, Section 101(a)(5)(A).

SECTION .0800 - HEARING PROCEDURE

.0803 REQUEST FOR ADMINISTRATIVE REVIEW AND APPEALS HEARING

(a) When any applicant for or client receiving vocational rehabilitation services wishes to request an administrative review or an appeals hearing, the individual shall submit a written request to the appropriate regional rehabilitation supervisor of the Division.

(b) The request shall indicate if the individual is requesting:

- (1) An administrative review and an appeals hearing to be scheduled concurrently; or
 - (2) only an appeals hearing.
- (c) The request shall contain the following information:
- (1) the name, address, and telephone number of the applicant or client; and
 - (2) a concise statement of the determination made by the rehabilitation staff for which an administrative review or appeal is being requested and the manner in which the person's rights, duties or privileges have been affected by the determination(s).

(d) ~~If a client is requesting an administrative review and the issue to be reviewed concerns the denial of services already underway under the client's individualized written rehabilitation plan (IWRP) and the client wishes the disputed services to continue during the administrative review, the~~

~~client shall indicate the desire to have the services continued in the request for an administrative review and submit the request prior to the effective date of the change in the IWRP. The Division shall provide for the continuation of the disputed service set forth in the client's IWRP during the administrative review for a period not to exceed 30 calendar days from the proposed effective date of the change in the IWRP unless the disputed service is contraindicated on the basis of medical or psychological information contained in the individual's case record, in which case the service shall not be continued. The Division shall not suspend, reduce, or terminate services being provided to a client under an Individualized Written Rehabilitation Program (IWRP) pending final resolution of the issue through either an appeals hearing or an administrative review unless the individual or the individual's representative so requests, or the Division has evidence that the services have been obtained through misrepresentation, fraud, collusion, or criminal conduct on the part of the individual.~~

Authority P.L. 102-569, Section 102 (d); G.S. 143-545A; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48.

.0806 APPOINTMENT OF HEARING OFFICER

Upon receipt of the applicant's or client's request for an appeals hearing from the regional rehabilitation supervisor, the Director shall appoint arrange for the appointment of an impartial hearing officer who meets the criteria of 34 C.F.R. 361.1(e)(2) to conduct a hearing. is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the individual's representative.

Authority G.S. 143-545A; 143B-157; 150B-2; 150B-23; P.L. 102-569; C.F.R. 361.48.

.0817 DISQUALIFICATION OF HEARING OFFICER

(a) If at any time the hearing officer believes he or she cannot conduct the hearing in a fair and impartial manner, the hearing officer shall submit to the Director a written statement indicating why he or she should be disqualified from the case. Submission of the statement shall disqualify the hearing officer. The Director shall inform all parties of the disqualification and the reasons therefor.

(b) If a party to the case believes that the hearing officer of record cannot conduct a hearing in a fair and impartial manner, the party shall submit an affidavit to the hearing officer for consideration. The hearing officer shall determine the matter as part of the record in the case, and this determination shall be subject to judicial review at the conclusion of the proceeding.

(c) When a hearing officer is disqualified or it is impractical of the hearing officer to proceed with the hearing, the Director shall arrange for the appointment of another hearing officer who is in the pool of persons qualified as defined in P.L. 102-569, Section 7(28) and who is mutually agreed upon by the Director and the individual or the

~~individual's representative shall be assigned by the Director~~ to proceed with the case. However, if it is shown to the Director or the newly assigned hearing officer that substantial prejudice to any party will result from continuation of the case then either:

- (1) The case shall be dismissed without prejudice; or
- (2) all or part of the case shall be repeated as necessary to substantially prevent or substantially remove the prejudice. The Director shall promptly inform all parties of the decision to assign a new hearing officer, that the case has been dismissed without prejudice, or that all or part of the case is to be repeated. Such notification shall include a statement of the reasons for the decision.

Authority G.S. 143-545A; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48; P.L. 102-569.

.0823 DIVISION DIRECTOR'S REVIEW AND FINAL DECISION

(a) The Division Director may review the hearing officer's decision and render the final decision.

(b) The Division Director's decision to review the hearing officer's decision shall be based on the following standards of review:

- (1) The hearing officer's decision shall not be arbitrary, capricious, an abuse of discretion, or otherwise unreasonable.
- (2) The hearing officer's decision shall be supported by substantial evidence; i.e., consistent with facts and applicable federal and state policy.
- (3) In reaching the decision, the hearing officer shall give appropriate and adequate interpretation to such factors as:
 - (A) the federal statute and regulations as they apply to a specific issue in question;
 - (B) the state plan as it applies to a specific issue in question;
 - (C) Division procedures as they apply to a specific issue in question;
 - (D) key portions of conflicting testimony;
 - (E) Division options in the delivery of services where such options are permissible under federal statute;
 - (F) restrictions in the federal statute with regard to supportive services as maintenance and transportation; and
 - (G) approved federal or Division policy as it relates to an issue in question.

(c) If the Division Director decides to review the hearing officer's decision, the Director shall send the written notification and allow the submission of additional evidence as required by 34 C.F.R. 361.48(c)(2)(iv) and (vii). The written notification shall be given to the applicant or client personally or by certified mail. If given by certified mail,

it shall be deemed to have been given on the delivery date appearing on the return receipt.

(d) Upon a determination to review the hearing officer's decision, the Division Director shall make the final decision and provide a written report thereof as required by 34 C.F.R. 361.48(c)(2)(viii) and (ix). The Division Director shall not overturn or modify a decision, or part of a decision, of an impartial hearing officer that supports the position of the individual except as allowed under P.L. 102-569, Section 102(d)(3)(C). The final decision shall be given to the applicant or client personally or by certified mail. If given by certified mail, it shall be deemed to have been given on the delivery date appearing on the return receipt.

(e) The hearing officer's decision shall be the final decision under the conditions specified in 34 C.F.R. 361.48(c)(2)(v).

(f) The Division Director shall forward a copy of the final decision, whether issued under (d) or (e) of this Rule, to the CAP Director, the regional rehabilitation supervisor, and the applicant's or client's representative, as appropriate. A copy shall also be included in the individual's official case record.

Authority G.S. 143-545A; 143B-157; 150B-2; 150B-23; 34 C.F.R. 361.48; 102-569, Section 102(d).

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR/Division of Medical Assistance intends to amend rule cited as 10 NCAC 26H .0213.

Temporary: This Rule was filed as a temporary rule effective September 29, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 1:30 pm on November 1, 1995 at NC Division of Medical Assistance, 1985 Umstead Drive, Kirby Bldg., Room 132, Raleigh, NC.

Reason for Proposed Action: This rule change will permit the State to utilize available Federal funds. In addition, it is expected that the receiving hospitals will make intergovernmental transfers to DMA.

Comment Procedures: Written comments concerning this rule-making action must be submitted by November 15, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN: Portia Rochelle, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal note is available upon written request from the same address.

Fiscal Note: This Rule affects the expenditure or distribu-

tion of State funds subject to the Executive Budget Act, Article 1 of Chapter 143.

CHAPTER 26 - MEDICAL ASSISTANCE

SUBCHAPTER 26H - REIMBURSEMENT PLANS

SECTION .0200 - HOSPITAL INPATIENT REIMBURSEMENT PLAN

.0213 DISPROPORTIONATE SHARE HOSPITALS

(a) Hospitals that serve a disproportionate share of low-income patients and have a Medicaid inpatient utilization rate of not less than one percent are eligible to receive rate adjustments. The cost report data and financial information that is required in order to qualify as a disproportionate share hospital effective April 1, 1991 is based on the fiscal year ending in 1989 for each hospital, as submitted to the Division of Medical Assistance on or before April 1, 1991. The cost report data and financial information to qualify as a disproportionate share hospital effective July 1, 1991 is based on the fiscal year ending in 1990 for each hospital, as submitted to the Division of Medical Assistance on or before September 1, 1991. In subsequent years, qualifications effective July 1 of any particular year are based on each hospital's fiscal year ending in the preceding calendar year. The patient days, costs, revenues, or charges related to nursing facility services, swing-bed services, home health services, outpatient services, or any other service that is not a hospital inpatient service cannot be used to qualify for disproportionate share status. A hospital is deemed to be a disproportionate share hospital if:

- (1) The hospital has at least two obstetricians with staff privileges at the hospital who have agreed to provide obstetric services to individuals eligible for Medicaid. In the case of a hospital located in a rural area, the term obstetrician includes any physician with staff privileges at the hospital to perform non-emergency obstetric services as of December 21, 1987 or to a hospital that predominantly serves individuals under 18 years of age; and
- (2) The hospital's Medicaid inpatient utilization rate, defined as the percentage resulting from dividing Medicaid patient days by total patient days, is at least one standard deviation above the mean Medicaid inpatient utilization rate for all hospitals that receive Medicaid payments in the state; or
- (3) The hospital's low income utilization rate exceeds 25 percent. The low-income utilization rate is the sum of:
 - (A) The ratio of the sum of Medicaid inpatient revenues plus cash subsidies received from the State and local governments, divided by the hospital's total patient revenues; and
 - (B) The ratio of the hospital's gross inpatient

charges for charity care less the cash subsidies for inpatient care received from the State and local governments divided by the hospital's total inpatient charges; or

- (4) The sum of the hospital's Medicaid revenues, bad debts allowance net of recoveries, and charity care exceeds 20 percent of gross patient revenues; or
 - (5) The hospital, in ranking of hospitals in the State, from most to least in number of Medicaid patient days provided, is among the top group that accounts for 50% of the total Medicaid patient days provided by all hospitals in the State; or
 - (6) Psychiatric Hospitals operated by the North Carolina Department of Human Resources, Division of Mental Health, Developmental Disabilities, Substance Abuse Services (DMH/DD/SAS) and UNC Hospitals operated by the University of North Carolina.
- (b) The rate adjustment for a disproportionate share hospital is 2.5 percent plus one fourth of one percent for each percentage point that a hospital's Medicaid inpatient utilization rate exceeds one standard deviation of the mean Medicaid inpatient utilization rate in the State. The rate adjustment is applied to a hospital's payment rate exclusive of any previous disproportionate share adjustments:
- (1) An additional one time payment for the 12-month period ending June 30, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the public hospital having the largest number of Medicaid inpatient days of all hospitals as determined in Subparagraph (a)(5) of this Rule. The payment limits of the Social Security Act, Title XIX, section 1923(g)(1)(B) require that when added to other DSH payments, the additional disproportionate share payment will not exceed 200 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. This payment may be doubled in accordance with section 1923(g)(2). The total of all payments may not exceed the limits on Disproportionate Share Hospital funding as set for the State by HCFA.
 - (2) An additional one time payment for the 12-month period ending September 30, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the public hospital having the largest number of Medicaid inpatient days of all hospitals as determined in Subparagraph (a)(5) of this Rule, determined without regard to the inpatient days of either the hospital that qualifies for disproportionate share payments under the provisions of

Subparagraph (b)(1) of this Rule or the hospitals that qualify for payments under 10 NCAC 26H .0212(b). The payment limits of the Social Security Act, Title XIX, section 1923(g)(1) applied to this payment require that when this payment is added to other DSH payments, the additional disproportionate share payment will not exceed 100 percent of the total costs of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. The total of all payments may not exceed the limits on Disproportionate Share Hospital funding as set for the State by HCFA.

- (3) An additional one time payment for the 12-month period ending September 30, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the Public hospitals that are the primary affiliated teaching hospitals for the University of North Carolina Medical Schools less payments made under authority of Paragraph (c) of this Rule. The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require that when this payment is added to other Disproportionate Share Hospital payments, the additional disproportionate share payment will not exceed 100 percent of the total cost of providing inpatient and outpatient services to Medicaid and uninsured patients less all payments received for services provided to Medicaid and uninsured patients. The total of all payments may not exceed the limits on DSH funding as set for the State by HCFA.
- (4) An additional one time payment for the 12-month period ending September 30, 1995, in an amount determined by the Director of the Division of Medical Assistance, may be paid to the hospitals that meet the requirements of the Social Security Act Title XIX, Section 1923(c) and that are owned or operated by the Public Hospital Authority organized pursuant to G.S. 131 E-15, that owns or operates hospitals as of September 30, 1995 with a larger number of Medicaid inpatient bed days than any other such Public Hospital Authority. For qualification under this Subparagraph, the requirements of Subparagraphs (a)(1) through (6) of this Rule do not apply. The payment limits of the Social Security Act, Title XIX, Section 1923(g)(1) applied to this payment require that when this payment is added to other Disproportionate Share Hospital payments, the additional disproportionate share payment will not exceed 100 percent of the total cost of providing inpatient and outpatient services to Medicaid and uninsured patients

less all payments received for services provided to Medicaid and uninsured patients, except that any payments that may have been made under Subparagraph (b)(1) of this Rule to any hospital qualified for payment under this Subparagraph shall be divided by two for calculating payments received. The total of all payments may not exceed the limits on Disproportionate Share Hospital funding as set for the State by HCFA.

- (5) (3) The payments authorized by Subparagraphs (1) and (2) (4) of this Paragraph shall be effective in accordance with G.S. 108A-55(c).

(c) Effective July 1, 1994, hospitals eligible under Subparagraph (a)(6) of this Rule will be eligible for disproportionate share payments, in addition to other payments made under the North Carolina Medicaid Hospital reimbursement methodology, from a disproportionate share pool under the circumstances specified in Subparagraphs (1), (2) and (3) of this Paragraph.

- (1) An eligible hospital will receive a monthly disproportionate share payment based on the monthly bed days of services to low income persons of each hospital divided by the total monthly bed days of services to low income persons of all hospitals items allocated funds.
- (2) This payment shall be in addition to the disproportionate share payments made in accordance with Subparagraphs (a)(1) through (5) of this Rule. However, DMH/DD/SAS operated hospitals are not required to qualify under the requirements of Subparagraphs (a)(1) through (5) of this Rule.
- (3) The amount of allocated funds shall be determined by the Director of the Division of Medical Assistance, but not to exceed the quarterly grant award of funds (plus appropriate non-federal match) earmarked for disproportionate share hospital payments less payments made under Subparagraphs (a)(1) through (5) divided by three.

In Subparagraph (c)(1) of this Rule, bed days of services to low income persons is defined as the number of bed days provided to individuals that have been determined by the hospital as patients that do not possess the financial resources to pay portions or all charges associated with care provided.

Low income persons include those persons that have been determined eligible for medical assistance. The count of bed days used to determine payment is based upon the month immediately prior to the month that payments are made.

Disproportionate share payments to hospitals are limited in accordance with The Social Security Act as amended, Title XIX section 1923 (g), limit on amount of payment to hospitals.

(d) Effective January 1, 1995 (see Subparagraph (6) of this Paragraph) and subject to the availability of funds,

hospitals that qualify as disproportionate share hospitals under Subparagraphs (a)(1) through (5) of this Rule and that also operate Medicare approved graduate medical education programs shall be eligible for disproportionate share payments for hospital inpatient services in addition to other payments made under the North Carolina Medicaid Hospital DRG reimbursement methodology from a disproportionate share pool under the circumstances specified in Subparagraphs (1) and (2) of this Paragraph:

- (1) Qualifications effective January 1, 1995 through September 30, 1995 are based on cost report data and financial information for the fiscal year ending in 1993 as submitted to the Division of Medical Assistance on or before September 1, 1994. Qualifications for the 12 month period beginning October 1, 1995 and subsequent 12 month periods beginning October 1 of each year, shall be based on cost report data and financial information for the fiscal year ending in the preceding calendar year, as submitted to the Division of Medical Assistance on or before September 1 immediately preceding the 12 month period beginning October 1 for which eligibility is being determined.
- (2) Additional payments for the period from January 1, 1995 through September 30, 1995 shall be made based on hospital cost per case mix index adjusted discharge, as established by Exhibit 5.1 contained in the report entitled "DRG-Based Prospective Payment Methodology for Inpatient Services" dated January 25, 1995 prepared by Myers and Stauffer, Chartered Certified Public Accountants, for the North Carolina Division of Medical Assistance and arranged from low to high as specified in Parts (A) and (B) of this Subparagraph:
 - (A) Hospitals with a calculated cost per case mix index adjusted discharge cost of three thousand one hundred fifty six dollars (\$3,156) or less shall be entitled to an additional payment in an amount that when added to other Medicaid payments may not exceed 100% of allowable Medicaid costs, as determined by the Medicare principles of cost reimbursement;
 - (B) Hospitals with a calculated cost per case mix index adjusted discharge cost of more than three thousand one hundred fifty six dollars (\$3,156) shall be entitled to additional payments in an amount that when added to other Medicaid payments may not exceed 85% of allowable Medicaid costs, as determined by Medicare principles of cost reimbursement.
- (3) Additional payments for the 12 month period beginning October 1, 1995 and for each subsequent 12 month period shall be determined as specified in Parts (A), (B) and (C) of this Subparagraph:

- (A) The calculated cost per case mix index adjusted discharge amount of three thousand one hundred fifty six (\$3,156) shall be updated annually by the National Hospital Market Basket Index and the most recent actual and projected cost data available from the North Carolina Office of State Budget and Management;
 - (B) Each hospital's cost per case mix index adjusted discharge shall be ascertained by analysis of charges for Medicaid inpatient claims reimbursed under the DRG methodology and paid during the immediately preceding calendar year, multiplied by each hospital's ratio of cost to charges derived from cost report data and financial information for the fiscal year of each hospital ending in the preceding calendar year, as submitted to the Division of Medical Assistance on or before the first day of September immediately preceding the 12 month period beginning October 1 for which eligibility is being determined; and
 - (C) Hospitals with a case mix index adjusted discharge cost equal to or less than three thousand one hundred fifty six (\$3,156) plus any annual updated amount shall be entitled to an additional payment in an amount that when added to other Medicaid payments may not exceed 100% of allowable Medicaid costs, as determined by the Medicare principles of cost reimbursement; hospitals with calculated costs per case mix index adjusted discharge greater than three thousand one hundred fifty six (\$3,156) plus any annual updated amount shall be entitled to additional payments in an amount that when added to other Medicaid payment does not exceed 85% of allowable Medicaid costs, as determined by Medicare principles of cost reimbursement.
- (4) Payments shall be made on an estimated basis no less frequently than quarterly during the period for which such payments are to be made. Estimated payments shall be based on costs incurred and payments received for Medicaid inpatient DRG services during the most recent fiscal year for which the Division of Medical Assistance has a completed cost report. Estimated payments made to each hospital shall be cost settled as determined by an independent CPA furnished by the provider, based on cost reports for the period for which payments are made, and appropriate adjustments shall be made to assure that such payments do not exceed the hospital's net cost of providing services to Medicaid patients.
 - (5) Payments may not exceed the amount of funds available as determined by the Director of the

Division of Medical Assistance. Should available funds be insufficient to pay in full the authorized payments, the Division of Medical Assistance shall ascertain maximum payments allowable and the funds available to qualifying hospitals shall be prorated on that basis.

- (6) The changes to disproportionate share payments authorized by this Paragraph are in accordance with G.S. 108A-55(c).

Authority G.S. 108A-25(b); 108A-54; 108A-55; 42 C.F.R. 447, Subpart C.

Notice is hereby given in accordance with G.S. 150B-21.2 that the DHR - Division of Medical Assistance intends to amend rule cited as 10 NCAC 50B .0313.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 1:30 p.m. on November 15, 1995 at the NC Division of Medical Assistance, 1985 Umstead Drive, Kirby Building, Room 132, Raleigh, NC.

Reason for Proposed Action: The amendment is proposed to clarify the income limit to use when determining Medicaid eligibility for "Qualified Medicare Beneficiaries."

Comment Procedures: Written comments concerning this rule-making action must be submitted by November 15, 1995 to: Division of Medical Assistance, 1985 Umstead Drive, Raleigh, NC 27603, ATTN: Portia Rochelle, APA Coordinator. Oral comments may be presented at the hearing. In addition, a fiscal note is available upon written request from the same address.

Fiscal Note: This Rule does not affect the expenditures or revenues of local government or state funds.

CHAPTER 50 - MEDICAL ASSISTANCE

SUBCHAPTER 50B - ELIGIBILITY DETERMINATION

SECTION .0300 - CONDITIONS FOR ELIGIBILITY

.0313 INCOME

(a) For family and children's cases, income from the following sources shall be counted in the calculation of financial eligibility:

- (1) Unearned.
 - (A) RSDI,
 - (B) Veteran's Administration,
 - (C) Railroad Retirement,
 - (D) Pensions or retirement benefits,

- (E) Workmen's Compensation,
- (F) Unemployment Compensation,
- (G) Support Payments,
- (H) Contributions,
- (I) Dividends or interest from stocks, bonds, and other investments,
- (J) Trust fund income,
- (K) Private disability or employment compensation,
- (L) That portion of educational loans, grants, and scholarships for maintenance,
- (M) Work release,
- (N) Lump sum payments,
- (O) Military allotments,
- (P) Brown Lung Benefits,
- (Q) Black Lung Benefits,
- (R) Trade Adjustment benefits,
- (S) SSI when the client is in long term care,
- (T) VA Aid and Attendance when the client is in long term care,
- (U) Foster Care Board payments in excess of state maximum rates for M-AF clients who serve as foster parents,
- (V) Income allocated from an institutionalized spouse to the client who is the community spouse as stated in 42 U.S.C. 1396r-5(d),
- (W) Income allowed from an institutionalized spouse to the client who is a dependent family member as stated in 42 U.S.C. 1396r-5(d),
- (X) Sheltered Workshop Income,
- (Y) Loans if repayment of a loan and not counted in reserve,
- (Z) Income deemed to Family and Children's clients.

(2) Earned Income.

- (A) Income from wages, salaries, and commissions,
- (B) Farm Income,
- (C) Small business income including self-employment,
- (D) Rental income,
- (E) Income from roomers and boarders,
- (F) Earned income of a child client who is a part-time student and a full-time employee,
- (G) Supplemental payments in excess of state maximum rates for Foster Care Board payments paid by the county to Family and Children's clients who serve as foster parents,
- (H) VA Aid and Attendance paid to a budget unit member who provides the aid and attendance.

(3) Additional sources of income not listed in Subparagraphs (a)(1) or (2) of this Rule will be considered available unless specifically excluded by Paragraph (b) of this Rule, or by regulation or statute.

(b) For family and children's cases, income from the following sources shall not be counted in the calculation of

financial eligibility:

- (1) Earned income of a child who is a part-time student but is not a full-time employee;
- (2) Earned income of a child who is a full-time student;
- (3) Incentive payments and training allowances made to WIN training participants;
- (4) Payments for supportive services or reimbursement of out-of-pocket expenses made to volunteers serving as VISTA volunteers, foster grandparents, senior health aides, senior companions, Service Corps of Retired Executives, Active Corps of Executives, Retired Senior Volunteer Programs, Action Cooperative Volunteer Program, University Year for Action Program, and other programs under Titles I, II, and III of Public Law 93-113;
- (5) Foster Care Board payments equal to or below the state maximum rates for Family and Children's clients who serve as foster parents;
- (6) Income that is unpredictable, i.e., unplanned and arising only from time to time. Examples include occasional yard work and sporadic babysitting;
- (7) Relocation payments;
- (8) Value of the coupon allotment under the Food Stamp Program;
- (9) Food (vegetables, dairy products, and meat) grown by or given to a member of the household. The amount received from the sale of home grown produce is earned income;
- (10) Benefits received from the Nutrition Program for the Elderly;
- (11) Food Assistance under the Child Nutrition Act and National School Lunch Act;
- (12) Assistance provided in cash or in kind under any governmental, civic, or charitable organization whose purpose is to provide social services or vocational rehabilitation. This includes V.R. incentive payments for training, education and allowance for dependents, grants for tuition, chore services under Title XX of the Social Security Act, VA aid and attendance or aid to the home bound if the individual is in a private living arrangement;
- (13) Loans or grants such as the GI Bill, civic, honorary and fraternal club scholarships, loans, or scholarships granted from private donations to the college, etc., except for any portion used or designated for maintenance;
- (14) Loans, grants, or scholarships to undergraduates for educational purposes made or insured under any program administered by the U.S. Department of Education;
- (15) Benefits received under Title VII of the Older Americans Act of 1965;
- (16) Payments received under the Experimental Housing Allowance Program (EHAP);
- (17) In-kind shelter and utility contributions paid directly to the supplier. For Family and Children's cases, shelter, utilities, or household furnishings made available to the client at no cost;
- (18) Food/clothing contributions in Family and Children's cases (except for food allowance for persons temporarily absent in medical facilities up to 12 months);
- (19) Income of a child under 21 in the budget unit who is participating in JTPA and is receiving as a child;
- (20) Housing Improvement Grants approved by the N.C. Commission of Indian Affairs or funds distributed per capital or held in trust for Indian tribe members under P.L. 92-254, P.L. 93-134 or P.L. 94-540;
- (21) Payments to Indian tribe members as permitted under P.L. 94-114;
- (22) Payments made by Medicare to a home renal dialysis patient as medical benefits;
- (23) SSI except for individuals in long term care;
- (24) HUD Section 8 benefits when paid directly to the supplier or jointly to the supplier and client;
- (25) Benefits received by a client who is a representative payee for another individual who is incompetent or incapable of handling his affairs. Such benefits must be accounted for separate from the payee's own income and resources;
- (26) Special one time payments such as energy, weatherization assistance, or disaster assistance that is not designated as medical;
- (27) The value of the U.S. Department of Agriculture donated foods (surplus commodities);
- (28) Payments under the Alaska Native Claims Settlement Act, Public Law 92-203;
- (29) Any payment received under Title II of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970;
- (30) HUD Community Development Block Grant funds received to finance the renovation of a privately owned residence;
- (31) Reimbursement for transportation expenses incurred as a result of participation in the Community Work Experience Program or for use of client's own vehicle to obtain medical care or treatment;
- (32) Adoption assistance;
- (33) Incentive payments made to a client participating in a vocational rehabilitation program;
- (34) Title XX funds received to pay for services rendered by another individual or agency;
- (35) Any amount received as a refund of taxes paid.

(c) For aged, blind, and disabled cases, income counted in the determination of financial eligibility is based on standards and methodologies in Title XVI of the Social

Security Act.

(d) For aged, blind, and disabled cases, income from the following sources shall not be counted:

- (1) Any Cost of Living Allowance (COLA) increase or receipt of RSDI benefit which resulted in the loss of SSI for those individuals described in Item (17) of Rule .0101 of this Subchapter.
- (2) Earnings for those individuals who have a plan for achieving self-support (PASS) that is approved by the Social Security Administration.

(e) Income levels for purposes of establishing eligibility are those amounts approved by the N.C. General Assembly and stated in the Appropriations Act for categorically needy and medically needy classifications, except for the following:

- (1) The income level shall be reduced by one-third when an aged, blind or disabled individual lives in the household of another person and does not pay his proportionate share of household expenses. The one-third reduction shall not apply to children under nineteen years of age who live in the home of their parents;
- (2) An individual living in a long term care facility or other medical institution shall be allowed as income level a deduction for personal needs described under Rule .0314 (Personal Needs Allowance) of this Subchapter;
- (3) The categorically needy income level for an aged, blind, and disabled individual or couple is the SSI individual or couple amount. This is the current Federal Benefit Rate (FBR);
- (4) The income level to be applied for Qualified Medicare Beneficiaries described in 42 U.S.C. 1396d and individuals described in 42 U.S.C. 1396e is based on the income level for one; or two for a married couple who live together and both receive Medicare.

Authority G.S. 108A-25(b); 108A-61; 42 C.F.R. 435.135; 42 C.F.R. 435.731; 42 C.F.R. 435.732; 42 C.F.R. 435.733; 42 C.F.R. 435.811; 42 C.F.R. 435.812; 42 C.F.R. 435.831; 42 C.F.R. 435.832; 42 C.F.R. 435.1007; 42 U.S.C. 1383c(b); 42 U.S.C. 1383c(d); 45 C.F.R. 233.20; P.L. 99-272; Section 12202; Alexander v. Flaherty Consent Order filed February 14, 1992.

TITLE 13 - DEPARTMENT OF LABOR

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. Department of Labor intends to adopt rules cited as 13 NCAC 18 .0101 - .0110. The agency published a Notice of Subject Matter for this proposed rule-making in the North Carolina Register on April 17, 1995, Page 149, (10:02 NCR 149).

Proposed Effective Date: January 1, 1996.

Reason for Proposed Action:

- 13 NCAC 18 .0101 - Incorporates Chapter 17 by reference.
 13 NCAC 18 .0102 - Provides definitions for 13 NCAC 18.
 13 NCAC 18 .0103 - Sets out licensing procedures for job listing services.
 13 NCAC 18 .0104 - Describes surety bond requirement.
 13 NCAC 18 .0105 - Provides guidance on rules governing contracts.
 13 NCAC 18 .0106 - Governs records to be maintained by job listing services.
 13 NCAC 18 .0107 - Governs advertising.
 13 NCAC 18 .0108 - Addresses prohibited acts.
 13 NCAC 18 .0109 - Sets out procedure for DOL review of a job listing service.
 13 NCAC 18 .0110 - Provides penalty amount for violations of the Act.*

Comment Procedures: Please submit your comments to Mr. Scott Templeton, APA Coordinator, NC Department of Labor, 4 W. Edenton Street, Raleigh, NC 27601, Fax (919) 715-5629 by November 15, 1995.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

CHAPTER 18 - JOB LISTING SERVICES

.0101 INTRODUCTION

The Job Listing Services Act (G.S. 95-47.19 through 95-47.32) directs that job listing services be subject to certain parts of G.S. 95, Article 5A regarding private personnel services. The North Carolina Administrative Code, Title 13, Chapter 17 addresses G.S. 95, Article 5A. To the extent that it is applicable, and with the words "job listing service" substituted for the words "private personnel service" where appropriate, this Chapter incorporates Chapter 17 by reference.

Statutory Authority G.S. 95-47.19; 95-47.21; 95-47.22; 95-47.23; 95-47.24; 95-47.30.

.0102 DEFINITIONS

As used in G.S. 95, Article 5B and this Chapter, unless the context clearly requires otherwise:

- (1) "Activities of a private personnel service," as used in G.S. 95-47.19, includes, but is not limited to, the following:
 - (a) producing a resume;
 - (b) setting up an appointment on behalf of an applicant, or otherwise making contact with a prospective employer on behalf of an applicant;
 - (c) testing an applicant's skill levels or aptitude for any type of work or profession; or
 - (d) counseling the applicant on techniques for job search, interview, salary or benefits negotiation, or any other job seeking methodology.

- (2) "Job order" means an oral or written communication from an employer authorizing a job listing service to include in the job listing service's list of jobs provided to applicants a position the employer currently has available.
- (3) Except as used in G.S. 95-47.19, "rules", "regulations", or "rules or regulations" as used in G.S. 95, Article 5B and in this Chapter refer to administrative rules adopted by the Department of Labor pursuant to G.S. 95, Article 5B and G.S. 150B.

Statutory Authority G.S. 95-47.30.

.0103 LICENSING PROCEDURES

An applicant for a license to operate a job listing service shall follow the procedures set out in 13 NCAC 17 for application for a license to operate a private personnel service, with the exception of the surety bond requirement. The surety bond required to be filed is required under G.S. 95-47.22(b).

Statutory Authority G.S. 95-47.22; 95-47.30.

.0104 SURETY BONDS

If a job listing service ceases business without completing its contracts with applicants or without paying refunds due under its contract with applicants, the North Carolina Department of Labor shall claim against the surety bond required under G.S. 95-47.22(b) on behalf of the affected applicants in order to make them whole under the contract. Refunds shall be in full to the extent the surety bond proceeds allow. Refunds shall be prorated between the applicants if the amount of the surety bond does not allow full refunds.

Statutory Authority G.S. 95-47.9; 95-47.22; 95-47.30.

.0105 CONTRACTS

(a) A job listing service must have a contract with an applicant for any service if a fee is charged to the applicant.

(b) At the time of execution an applicant shall receive a copy of the contract signed by the applicant and the job listing service.

(c) The applicant's name shall be typed or printed in a clearly legible manner adjacent to the place for the applicant's signature.

(d) The contract shall include the applicant's address, driver's license state and number, social security number, and phone number. This information shall be legible.

(e) All job listing service contracts for use with an applicant shall set forth in clear and unambiguous terms the respective rights and obligations of the applicant and the job listing service.

(f) Refund Policy. A job listing service shall abide by the refund policy (if any) stated on its contract by paying any refund due under the terms of the contract within 15 days of:

- (1) Receiving a request from any applicant; or
- (2) If the refund is in dispute, upon receiving a written final determination that a refund is due. Such determination may be issued by the Commissioner, an arbitrator, or a court of law.

(g) The terms of the contract shall constitute the entire agreement between the job listing service and the applicant. Any ambiguities in the contract or in information provided to the applicant outside the contract shall be interpreted in favor of the applicant.

(h) Job listing services shall not provide to applicants guarantees of any sort relating to the service provided.

(i) If the job listing service represents to the applicant that the service may be frozen or suspended as the applicant desires, the terms and conditions of such shall be included in the contract and shall include a place for the dates of the suspension and resumption to be entered and signed for by the applicant and the authorized representative of the job listing service.

Statutory Authority G.S. 95-47.25; 95-47.30.

.0106 RECORDS

(a) Job orders or Job Specifications. A job order may be taken over the telephone but must be reduced to writing before being used with applicants. Every job listing service shall maintain records of individual jobs orders for 18 months from the date on which the job was last published or used with applicants, whichever is later.

(b) Licensees Going Out of Business. If a licensee goes out of business records must be maintained pursuant to this Rule. Those records must be available to the Commissioner and the licensee must inform the Commissioner in writing as to where its records will be kept.

Statutory Authority G.S. 95-47.29; 95-47.30.

.0107 ADVERTISING

(a) Bona Fide Job Order Required. No licensee shall publish or cause to be published any advertisement of a position soliciting persons to contract with the job listing service unless the licensee has on file a bona fide job order covering all information set forth in the advertisement.

(b) False or Misleading Advertisements. No licensee shall circulate to any applicant or employer any false or misleading information by advertisement or make any statements known to be false.

(c) Advertising of Salaries. All salaries, where the dollar amount is advertised, must be substantiated by the job order.

Statutory Authority G.S. 95-47.9; 95-47.26; 95-47.30.

.0108 PROHIBITED ACTS

A job listing service shall not coerce an applicant into contracting with the job listing service by applying or using duress, undue influence, fraud or misrepresentation.

Statutory Authority G.S. 95-47.4; 95-47.22; 95-47.30.

.0109 REVIEW OF JOB LISTING SERVICES

(a) Job Listing Service to Aid North Carolina Department of Labor. A job listing service shall aid the Department of Labor in any review of the service pursuant to G.S. 95-47.31 by providing to the Department copies of all requested contracts with applicants.

(b) The Department of Labor shall post the results of any survey in the offices of the Private Personnel Service Division for a minimum of 30 days. In addition a copy of the results shall be supplied to any citizen who makes a request in writing.

Statutory Authority G.S. 95-47.29; 95-47.30; 95-47.31.

.0110 PENALTY

Any fine levied pursuant to G.S. 95-47.9(e) shall be in the amount of one hundred dollars (\$100.00) for each day the job listing service operates without a license, the penalty not to exceed a total of two thousand dollars (\$2000.00).

Statutory Authority G.S. 95-47.9; 95-47.21; 95-47.30.

TITLE 15A - DEPARTMENT OF ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Notice is hereby given in accordance with G.S. 150B-21.2 that the Environment, Health, and Natural Resources - Environmental Management Commission intends to amend rule cited as 15A NCAC 2H .0219.

Proposed Effective Date: May 1, 1996.

Public Hearings will be conducted at 7:00 pm on the following dates and locations:

November 8, 1995

Auditorium

Catawba Valley Community College

2550 Highway 70 SE

Hickory, NC

November 9, 1995

Ground Floor Hearing Room

Archdale Building

512 N. Salisbury Street

Raleigh, NC

November 15, 1995

Auditorium

Pitt County Agriculture Center

403 Old Creek Road

Greenville, NC

November 16, 1995

Cafeteria

New Hanover High School

1307 Market Street

Wilmington, NC

Reason for Proposed Action: The existing rules that address reuse of reclaimed water are considered to be inadequate due to several factors. The significant concerns expressed by the regulated community include:

- Current regulations do not adequately address the broad spectrum of reuse opportunities and therefore, limit or prohibit many reuse projects from being pursued; and
 - Existing design criteria, such as treatment buffer requirements, do not facilitate or encourage water reuse.
- The Water Quality Section has been actively discussing rule revisions to specifically address reuse. During these discussions,

staff has had numerous opportunities to discuss reuse with the regulated community, interested individuals in the university/research area, interested individuals throughout both the health and environmental aspects of the Department of Environment, Health, and Natural Resources, the Water Issues Legislative Research Committee of the General Assembly, the Water Quality Committee of the Environmental Management Commission and the full Environmental Management Commission.

Scope/Nature of Rule/and Summary of Rule After taking many of the comments and concerns of the above mentioned parties, the Water Quality Section has developed draft rule amendments to address the spectrum of reuse opportunities that appear to be practical in the State of North Carolina. These rule modifications specifically address the following:

- Treatment and operational considerations for facilities producing reclaimed water for reuse.
- Clarification of language to allow the use of reclaimed water in combination with other disposal systems, such as surface water discharges (NPDES permits).
- Identification requirements and design considerations for reclaimed water distribution systems.
- Specific requirements for reuse of reclaimed water for the following activities:
 - Areas intended to be accessible to the public such as residential lawns, golf courses, cemeteries, parks, school grounds, industrial or commercial site grounds, landscape areas, highway medians, roadways and other similar areas.
 - Reclaimed water for industrial purposes such as process water or cooling water, aesthetic purposes such as decorative ponds or fountains, fire protection, dust control, street cleaning and other similar reuse options.
 - Reclaimed water for urinal and toilet flushing or fire protection in sprinkler systems located in commercial or industrial facilities or buildings, apartment buildings, condominiums, hotels, motels or other similar structures provided that unauthorized personnel do not have access to the plumbing system for repairs or modifications.
- Specific language indicating that staff is concerned or cautious at this point in time to develop rules specifically for the use of reclaimed water for either irrigation of food crops for direct human consumption, use of reclaimed water for swimming pools, hot-tubs or similar uses or as a direct raw water supply for potable water systems.

Comment Procedures: The purpose of these hearings and the written comment period is to receive comments on the proposed amendments from interested people. The written comment period will be open until November 30, 1995. The EMC is interested in comments in favor of, opposed to, or alternatives to the proposed language. You may submit comments, statements, data and other information in writing prior to, during or after the hearing but no later than November 30, 1995. You may also present verbal comments at the hearing. The Hearing Officer may limit the length of time that you may speak so that all those who wish to speak may have an opportunity to do so. We encourage you to submit written comments. You may obtain further explanations and details of the proposed amendment by writing or calling:

Donald Safrit, P.E.
Assistant Chief for Technical Support
DEHNR/Division of Environmental Management
PO Box 29535
Raleigh, NC 27626-0535
(919) 733-5083, ext. 519.

Important Note: The EMC may make some changes in final rules without renote and rehearing, as long as the adopted rules do not differ substantially from the proposed rules. The EMC may adopt rules that are more or less stringent than those being noticed. (See G.S. 150B-21.2(f) for this authority.) The EMC must determine that the final adopted rules are not substantially different from the proposed rules. All interested and potentially affected persons are strongly encouraged to read the entire announcement and supporting information and make comments on the proposal presented. The proposed effective date for final rule amendments is May 1, 1996. The proposed modifications are designed to make the reuse program more flexible to encourage utilization of highly treated wastewaters where drinking quality water may be currently utilized.

Fiscal Note: This Rule does not affect the expenditures or revenues of state or local government funds. There are no direct costs to local governments if they choose not to pursue the reuse of reclaimed wastewater. The rules regulating the reuse of reclaimed wastewater are strictly optional and totally voluntary.

CHAPTER 2 - ENVIRONMENTAL MANAGEMENT

SUBCHAPTER 2H - PROCEDURES FOR PERMITS: APPROVALS

SECTION .0200 - WASTE NOT DISCHARGED TO SURFACE WATERS

.0219 MINIMUM DESIGN REQUIREMENTS

(a) All facilities requiring a permit pursuant to this Section shall be designed following good engineering practice. The plans and specifications for all projects must be sealed by a Professional Engineer. The only exceptions from the Professional Engineer requirement are those allowed in Rule .0205(d)(1)(A)(iii) of this Section.

(b) Waste, including treated waste, shall not be placed directly into, or in contact with, GA classified groundwater unless such placement will not result in a contravention of GA groundwater standards, as demonstrated by predictive calculations or modeling methods acceptable to the Director.

(c) Impoundments, trenches or other excavations made for the purpose of storing or treating waste will not be excavated into bedrock unless the placement of waste into such excavations will not result in a contravention of assigned standards, as demonstrated by predictive calculations or modeling methods acceptable to the Director.

(d) The bottoms of earthen impoundments, trenches or other similar excavations with the exception of nitrification fields, infiltration systems, and sewer line excavations shall be at least four feet above the bedrock surface, except that the bottom of excavations which are less than four feet above bedrock shall have a liner with a hydraulic conductivity no greater than 1×10^{-7} centimeters per second. Liner thickness will be that thickness necessary to achieve a leakage rate consistent with the sensitivity of classified groundwaters. Separation distances or liner requirements may be reduced if it can be demonstrated by predictive calculations or modeling methods acceptable to the Director, that construction and use of these treatment and disposal units will not result in contravention of assigned standards.

(e) Waste shall not be applied or discharged onto or below the land surface when the vertical separation between the waste and the seasonal high water table is less than one foot. If the area is to be utilized for industrial waste and has a separation of less than three feet, and in other areas as designated by the Director, a demonstration must be made using predictive calculations or modeling methods, acceptable to the Director, that such placement will not result in contravention of classified groundwater standards.

(f) Treatment works and disposal systems utilizing earthen basins, lagoons, ponds or trenches, excluding nitrification fields, infiltration systems, and holding ponds containing non-industrial treated effluent prior to spray irrigation, for treatment, storage or disposal shall have either a liner of natural material at least one foot in thickness and having a hydraulic conductivity of no greater than 1×10^{-6} centimeters per second when compacted, or a synthetic liner of sufficient thickness to exhibit structural integrity and an effective hydraulic conductivity no greater than that of the natural material liner.

(g) Except as otherwise provided by these requirements or by terms of a permit, all waste treatment, storage and disposal facilities must maintain and operate a groundwater monitoring system as approved by the Division. The monitoring system must be designed to assess the impact of any discharge on the quality of the underlying groundwaters and must be based on the results of the hydrogeologic investigation.

(h) For pumping stations:

- (1) no by-pass or overflow lines;
- (2) multiple pumps shall be provided capable of pumping at a rate of 2.5 times the average daily flow rate with any one pump out of service. Pump-on/Pump-off elevations shall be set such that 2-8 pumping cycles per hour may be achieved in the pump station at average flow. If extended detention times are necessary due to phased development, the need for odor and corrosion control must be evaluated by the applicant;
- (3) at least one of the following shall be required:
 - (A) dual source or standby power supply on site or;
 - (B) telemetry systems with sufficient numbers of standby generators and personnel for distribution or;
 - (C) approval by the Director that the pump station:
 - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
 - (ii) has sufficient storage capacity that no potential for overflow exists, and
 - (iii) is connected to facilities that can tolerate septic wastewater due to prolonged detention; or
 - (D) where the waters that would be impacted by a power failure are classified as C, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source or other reliability measures would not be needed.
- (4) screened vents for all wet wells;
- (5) high water audio and visual alarms;
- (6) protection from a 100 year flood;
- (7) restricted access to the site and equipment.
- (8) all-weather roadway to the site;

(i) For sewer systems and sewer system extensions:

- (1) All building drains and building sewers which are approved by the local building inspector in accordance with the North Carolina Building Code are deemed to be permitted by the Environmental Management Commission;
- (2) All sewers shall be designed based upon at least minimum standards which include:
 - (A) wastewater flow rate at design loading should result in the sewer flowing approximately half full. The sewer must also be evaluated as to its ability to carry peak loadings;
 - (B) a velocity of two feet per second;
 - (C) construction and operation shall not result in water pollution;
 - (D) infiltration rate limited to 100 gallons per day per inch of pipe diameter per mile of pipe;
 - (E) construction and operation consistent with all applicable local ordinances;
 - (F) for public gravity sewers, a minimum eight inch diameter pipe and for private gravity sewers, a minimum six inch diameter pipe;
 - (G) minimum separations:

(i) Storm sewers (vertical)	12 inches
(ii) Water mains (vertical-water over sewer)	18 inches
or	
(horizontal)	10 feet
(iii) In benched trenches (vertical)	18 inches
(iv) Any private or public water supply source, including any WS-I waters or Class I or Class II impounded reservoirs used as a source of drinking water	100 feet
(v) Waters classified WS-II, WS-III, B, SA, ORW, HQW, or SB [from normal high water (or tide elevation)]	50 feet
(vi) Any other stream, lake or impoundment	10 feet
(vii) Any building foundation	5 feet
(viii) Any basement	10 feet
(ix) Top slope of embankment or cuts of 2 feet or more vertical height	10 feet
(x) Drainage systems	
(I) Interceptor drains	5 feet
(II) Ground water lowering and surface drainage ditches	10 feet
(xi) Any swimming pool	10 feet
(xii) Ferrous sewer pipe with joints equivalent to water main standards, shall be used where these minimum separations cannot be maintained. The minimum separation shall however not be less than 25 feet from a private well or 50 ft from a public water supply well.	
- (H) three feet minimum cover shall be provided for all sewers unless ferrous material pipe is specified. Ferrous material pipe or other pipe with proper bedding to develop design supporting strength shall be provided where sewers are subject to traffic bearing loads;
- (I) the maximum separation between manholes shall be 425 feet unless written documentation is submitted with the application that the owner/authority has the capability to perform routine cleaning and maintenance on the sewer at the specified manhole separation;
- (J) drop manholes shall be provided where invert separations exceed 2.5 feet;
- (K) manholes shall be designed for 100-year flood protection;
- (L) an air relief valve shall be provided at all high points along force mains;
- (M) odor and corrosion control must be satisfactorily addressed by the applicant for all sewers and force mains with extended travel times.

(j) For treatment works and disposal systems:

- (1) no by-pass or overflow lines;
- (2) multiple pumps if pumps are used;
- (3) at least one of the following:

- (A) dual source/dual feed or automatically activated standby power supply on site, capable of powering all essential treatment components under design conditions, or
 - (B) approval by the Director that the facility:
 - (i) serves a private water distribution system which has automatic shut-off at power failure and no elevated water storage tanks, and
 - (ii) has sufficient storage capacity that no potential for overflow exists, and
 - (iii) can tolerate septic wastewater due to prolonged detention; or
 - (C) where the waters that would be impacted by a power failure are classified as C Waters, the applicant may be allowed to show a history of power reliability that would demonstrate that an alternative power source or other source or reliability measures would not be needed.
- (4) protection from 100 year flood;
- (5) buffer zones of at least the following distances, and greater where necessary to comply with Section 2H .0400 of this Subchapter or to address particular site or waste characteristics:
- (A) Any habitable residence or place of public assembly under separate ownership or which is to be sold:
 - (i) for spray irrigation systems
(application area) not covered by
15A NCAC 2H .0219(k) 400 feet
 - (ii) for surface residual application 400 feet
 - (iii) for subsurface residual injection 200 feet
 - (iv) for facultative lagoons 400 feet
 - (v) for activated sludge plants or
surface sand filters 100 feet
 - (vi) for soil remediation sites 100 feet
 - (B) Any private or public
water supply source 100 feet
 - (C) Streams classified as WS or B:
 - (i) for subsurface disposal 50 feet
 - (ii) for non-discharge surface disposal except
for high rate infiltration systems 100 feet
 - (iii) high rate infiltration systems 200 feet
 - (D) Waters classified SA or SB:
 - (i) all systems except for high rate
infiltration systems 100 feet
from mean
high water
 - (ii) high rate infiltration systems 200 feet
from mean
high water
 - (E) Any other stream, canal, marsh, or coastal waters
 - (i) for subsurface disposal 50 feet
 - (ii) for non-discharge surface disposal except
for high rate infiltration systems 100 feet
 - (iii) high rate infiltration systems 200 feet
 - (iv) wastewater treatment facilities 50 feet
 - (F) Any Class I or Class II impounded
reservoir used as a source of
drinking water
 - (i) all systems except for high rate
infiltration systems 100 feet
from normal
high water
 - (ii) high rate infiltration systems 200 feet
from normal
high water
 - (G) Any other lake or impoundment:
 - (i) for subsurface disposal 50 feet
 - (ii) for surface disposal except for

	high rate infiltration systems	100 feet
(iii)	high rate infiltration systems	200 feet
(H)	Any building foundation except treatment facilities:	
(i)	for subsurface disposal	10 feet
(ii)	for surface disposal	15 feet
(I)	Any basement	
(i)	for subsurface disposal	15 feet
(ii)	for surface disposal	15 feet
(J)	Any property line	
(i)	for spray irrigation	150 feet
(ii)	for other surface disposal systems	50 feet
(iii)	for subsurface residuals injection	50 feet
(iv)	for other surface treatment systems	50 feet
(v)	for other subsurface systems	50 feet
(vi)	for soil remediation sites	50 feet
(K)	Top of slope of embankments or cuts of two feet or more in vertical height	
(i)	for systems other than rapid infiltration systems	15 feet
(ii)	for rapid infiltration systems	100 feet
(L)	Any water line from a disposal system	10 feet
(M)	Drainage systems (Ditches, drains, surface water diversions, etc):	
(i)	Interceptor drains and surface water diversions (upslope)	
(I)	for subsurface disposal	10 feet
(II)	for surface disposal other than spray irrigation systems and rapid infiltration systems	10 feet
(III)	for spray irrigation systems	100 feet
(IV)	for rapid infiltration systems	200 feet
(ii)	Interceptor drains and surface water diversions (downslope)	
(I)	for subsurface disposal	25 feet
(II)	for surface disposal other than spray irrigation systems and rapid infiltration systems	25 feet
(III)	for spray irrigation systems	100 feet
(IV)	for rapid infiltration systems	200 feet
(iii)	Groundwater lowering and surface drainage ditches	
(I)	for subsurface disposal	25 feet
(II)	for surface disposal other than spray irrigation and rapid infiltration systems	25 feet
(III)	for spray irrigation systems	100 feet
(IV)	for rapid infiltration systems	200 feet
(N)	Any swimming pool	
(i)	for subsurface disposal	15 feet
(ii)	for surface disposal	100 feet
(O)	Any other nitrification field (except repair area)	20 feet
(P)	Any well with the exception of an approved groundwater monitoring well	100 feet
(Q)	Public right-of-way surface disposal	50 feet
(6)	flow equalization of at least 25 percent of the facilities permitted hydraulic capacity must be provided for all seasonal or resort facilities and all other facilities with fluctuations in influent flow which may adversely affect the performance of the system;	
(7)	preparation of an operational management plan, including restricted access to the site and equipment, and, if appropriate, a crop management plan;	
(8)	except for facilities for single family residences or as approved by the Director, appropriate monitoring wells	

designed to assess the impacts on the groundwater of any discharge and constructed in accordance with Section 2C .0100 of this Chapter;

(9) a minimum of 30 days of residual holding must be provided.

(k) For Reuse of Reclaimed Wastewater: Land Application of Domestic Wastewater on Golf Courses and Other Public Access Areas: It is the intent of the Commission to encourage the beneficial reuse of the state's water resources concurrent with the protection of public health and the environment. In the event of conflict between the technical requirements of this Rule and any more stringent technical requirements of any other rule of this Commission, this Rule shall apply to the reuse of reclaimed wastewater.

(1) The following are treatment requirements for reuse of reclaimed domestic, municipal or industrial wastewater where reuse is the only managed wastewater option utilized (e.g., reuse option such as spray irrigation alone):

(A) (1) Aerated flow equalization facilities with a capacity based upon either a representative diurnal hydrograph or of at least 25 percent of the daily system design flow.

(B) (2) All essential treatment units shall be provided in duplicate.

(C) (3) The treatment process shall produce an a tertiary quality effluent (filtered or equivalent) with a monthly average TSS of less than 5 mg/l and a daily maximum TSS of less than 10 mg/l and a maximum monthly geometric mean fecal coliform level of less than or equal to 200 5/100 ml, prior to discharge to a five-day detention the irrigation pond. Effluent from the treatment facility shall be discharged to a five-day side-stream detention pond only if the fecal coliform levels cannot be met. The facility must have the ability to return the effluent back to the treatment facility or otherwise meet the effluent requirements prior to discharge to the irrigation pond. Continuous on-line monitoring for residual chlorine or for residuals of other disinfectants, if used, and for turbidity or particle count shall be provided prior to discharge to the irrigation pond. Continuous flow recording shall also be provided.

(D) (4) There must be no public access to the wastewater treatment facility or the five-day detention pond. There shall be a 50 foot buffer from the five day detention pond to property lines.

(E) (5) The size of any irrigation pond, that follows the five day detention holding pond, shall be justified using a mass water balance based upon a recent 25 year period utilizing monthly average precipitation data, potential evapotranspiration and soil drainage data that are available from, or are representative of, the area involved. for worse case conditions of record. There shall be a 50 foot buffer from the irrigation pond to property lines.

(F) (6) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the five-day detention irrigation pond shall be provided.

(G) (7) Requirements for the lining of the five-day detention and irrigation ponds, which may include use of impervious natural materials, shall be site-specific.

(H) There shall be a certified operator of a grade equivalent or greater than the facility classification on call 24 hours/day.

(8) In the design of the sprinkler system, there shall be no direct cross connections to a potable water supply (includes no spigots on the distribution system).

(9) The rate of application shall be site specific.

(10) There shall be a 50 foot vegetative buffer zone between the edge of spray influence and the nearest dwelling.

(11) Signs shall be posted at the proshop stating that the course is irrigated with treated wastewater.

(12) There shall be a certified operator of a class equivalent to the class facility on call 24 hours/day.

(2) The following are treatment requirements for reuse of reclaimed domestic, municipal or industrial wastewater where reuse is utilized in combination with other managed wastewater options (e.g., reuse options and discharge via National Pollutant Discharge Elimination System (NPDES) permit):

(A) Aerated flow equalization facilities with a capacity based upon either a representative diurnal hydrograph or at least 25 percent of the daily system design flow.

(B) All essential treatment units shall be provided in duplicate.

(C) The treatment process shall produce a tertiary quality effluent (filtered or equivalent) with a fecal coliform level of less than or equal to 200/100 ml, prior to reuse. Continuous on-line monitoring for residual chlorine or for residuals of other disinfectants, if used, and for turbidity or particle count shall be provided prior to reuse. Continuous flow recording shall also be provided.

(D) An automatically activated standby power source or other means to prevent improperly treated wastewater from entering the reuse distribution system shall be provided.

(E) There shall be a certified operator of a grade equivalent or greater than the facility classification on call 24 hours/day.

(F) No storage facilities are required as long as it can be demonstrated that other permitted disposal options are available if the reclaimed wastewater cannot be completely utilized.

(3) Reuse Categories and specific requirements and conditions:

- (A) Reclaimed wastewater for land application to areas intended to be accessible to the public such as residential lawns, golf courses, cemeteries, parks, school grounds, industrial or commercial site grounds, landscape areas, highway medians, roadways and other similar areas:
 - (i) The rate of application shall be site-specific and shall be in accordance with the recommendations of either a soil scientist, agronomist or an individual with at least three years experience in the comprehensive evaluation of soils. The application rate may take both the maximum soil absorption and water needs of the receiving crop into consideration.
 - (ii) Notification shall be provided to inform the public of the use of reclaimed wastewater (Non Potable Water) and that the water is not intended for drinking.
 - (iii) Minimum Buffers:
 - (I) There shall be a 50 foot buffer from the edge of spray influence and the nearest dwelling on adjacent property.
 - (II) There shall be a 10 foot buffer from the edge of spray influence and any swimming pool or surface waters.
 - (III) There shall be a 10 foot buffer from the edge of spray influence and any property line.
 - (IV) There shall be a 100 foot buffer from the edge of spray influence and any water supply well. There shall be a 10 foot buffer from the edge of spray influence and any nonpotable well.
 - (iv) Land Application requirements:
 - (I) Complete plans and specifications for the entire system, including treatment, storage, application, and distribution facilities shall be required in accordance with Rule .0205(d)(7) of this Section. Treatment works previously permitted will not need to be shown unless they are directly tied into the new units or are critical to the understanding of the complete process.
 - (II) A city, county, municipal or other governmental entity that provides reclaimed wastewater to an approved distribution system may submit a program description for local approval of irrigation systems. The program submission shall consist of design guidance, cross-connection prevention, customer education, loading rate determination procedures and a complete description of how the program will be managed.
- (B) Reclaimed wastewater for industrial purposes such as process water or cooling water, aesthetic purposes such as decorative ponds or fountains, fire protection, dust control, street cleaning and other similar reuse options. Notification shall be provided to inform employees or the public of the use of reclaimed wastewater (Non Potable Water) in these systems and that the water is not intended for drinking.
- (C) Reclaimed wastewater may be used for urinal and toilet flushing or fire protection in sprinkler systems located in commercial or industrial facilities or buildings, apartment buildings, condominiums, hotels, motels or other similar structures provided that unauthorized personnel do not have access to the plumbing system for repairs or modifications. All reclaimed wastewater valves and outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel only. Notification shall be provided to inform employees or the public of the use of reclaimed wastewater (Non Potable Water) in these systems and that the water is not intended for drinking.
- (D) Reclaimed wastewater shall not be used for irrigation of direct food chain crops.
- (E) Reclaimed wastewater shall not be used for swimming pools, hot-tubs or similar uses.
- (F) Reclaimed wastewater shall not be used for direct reuse as a raw potable water supply.
- (4) The following are requirements for systems that distribute reclaimed wastewater:
 - (A) All reclaimed wastewater valves, storage facilities and outlets shall be tagged or labeled to warn the public or employees that the water is not intended for drinking. Where appropriate, such warning shall inform the public or employees to avoid contact with the water.
 - (B) All reclaimed wastewater piping, valves, outlets and other appurtenances shall be color-coded, taped, or otherwise marked to identify the source of the water as being reclaimed wastewater.
 - (i) All reclaimed wastewater piping and appurtenances shall be either colored purple (Pantone 522) and embossed or integrally stamped or marked "CAUTION: RECLAIMED WASTEWATER - DO NOT DRINK" or be installed with a purple (Pantone 522) identification tape or polyethylene vinyl wrap. The warning shall be stamped on opposite sides of the pipe and repeated every 3 feet or less.
 - (ii) Identification tape shall be at least 3 inches wide and have white or black lettering on purple (Pantone 522) field stating "CAUTION: RECLAIMED WASTEWATER - DO NOT DRINK". Identification tape shall be installed on top of reclaimed wastewater pipelines, fastened at least every 10 feet to each pipe length and run continuously the entire length of the pipe.
 - (iii) Existing underground distribution systems retrofitted for the purpose of distributing reclaimed wastewater shall be taped or otherwise identified as in Subpart (i) or (ii) of this Paragraph. This identification need

not extend the entire length of the distribution system but shall be incorporated within 10 feet of crossing any potable water supply line or sanitary sewer line.

(C) All reclaimed wastewater valves and outlets shall be of a type, or secured in a manner, that permits operation by authorized personnel only.

(D) Above ground hose bibs (spigots or other hand operated connections) shall not be present. Hose bibs shall be located in locked, below grade vaults which shall be clearly labeled as being of nonpotable quality. As an alternative to the use of locked, below grade vaults with standard hose bib services, hose bibs which can only be operated by a special tool may be placed in nonlockable underground service boxes clearly labeled as nonpotable water.

(E) Tank Trucks

(i) Tank trucks and other equipment used to distribute reclaimed wastewater shall be clearly identified with advisory signs.

(ii) Tank trucks used to transport reclaimed wastewater shall not be used to transport potable water that is used for drinking or other potable purposes.

(iii) Tank trucks used to transport reclaimed wastewater shall not be filled through on-board piping or removable hoses that may subsequently be used to fill tanks with water from a potable water supply.

(F) Cross-Connection Control

(i) There shall be no cross-connections between the reclaimed wastewater and potable water systems.

(ii) Where both reclaimed wastewater and potable water are supplied to a reclaimed wastewater use area, a reduced pressure principle backflow prevention device or an approved air gap separation shall be installed at the potable water service connection to the use area. The installation of the reduced pressure principal backflow prevention device shall allow proper testing.

(iii) Where potable water is used to supplement a reclaimed wastewater system, there shall be an air gap separation, approved and regularly inspected by the potable water supplier, between the potable water and reclaimed wastewater.

(iv) Reclaimed water shall not enter a dwelling unit or a building containing a dwelling unit except as allowed in Part (k)(3)(C) of this Rule.

(I) Wastewater Flow Rates:

(1) In determining the volume of sewage from dwelling units, the flow rate shall be 120 gallons per day per bedroom. The minimum volume of sewage from each dwelling unit shall be 240 gallons per day and each additional bedroom above two bedrooms will increase the volume by 120 gallons per day. Each bedroom or any other room or addition that can reasonably be expected to function as a bedroom shall be considered a bedroom for design purposes. When the occupancy of a dwelling unit exceeds two persons per bedroom, the volume of sewage shall be determined by the maximum occupancy at a rate of 60 gallons per person per day.

(2) The following table shall be used to determine the minimum allowable design daily flow of wastewater facilities. Design flow rates for establishments not identified below shall be determined using available flow data, water-using fixtures, occupancy or operation patterns, and other measured data.

Type of Establishments

**Daily Flow
For Design**

Airports, also RR Stations, bus terminals.

(not including food service facilities)

5 gal/passenger

Barber Shops

50 gal/chair

Bars, Cocktail Lounges (not including food services)

20 gal/seat

Beauty Shops

125 gal/booth or bowl

Bowling Alleys

50 gal/lane

Businesses (other than those listed in this table)

25 gal/employee

Camps

Construction or work camps

60 gal/person

Summer camps

60 gal/person

Camp grounds Without water and sewer hookups

100 gal/campsite

Travel trailer/recreational vehicle park with water and sewer hookup

120 gal/campsite

Churches (not including food service, day care and camps)	3 gal/seat
Country Clubs - Resident Members	60 gal/person
Nonresident Members	20 gal/person
Day Care Facilities	15 gal/person
Factories (exclusive of industrial wastes) -- per shift	25 gal/person
Add for showers -- per shift	10 gal/person
Food Service Facilities Restaurants (including fast food)	40 gal/seat or 40 gal/15 ft ² of dining area, whichever is greater
24-hour Restaurants	50 gal/seat
Single-Service (exclusive of fast food)	25 gal/seat
Food Stands	
(1) Per 100 square feet of total floor space	50 gal
(2) Add per employee	25 gal
Hospitals	300 gal/bed
Laundries (self-service)	500 gal/machine
Marinas	10 gal/boat slip
With bathhouse	30 gal/boat slip
Meat Markets	
(1) Per 100 square feet of total floor space	50 gal
(2) Add per employee	25 gal
Motels/Hotel 120	gal/room
with cooking facilities in room	175 gal/room
Nursing/Rest Homes -- With laundry	120 gal/bed
Without laundry	60 gal/bed
Offices -- per shift	25 gal/person
Residential Care Facilities	60 gal/person
Resort (e.g. condominiums, apartments, motels, hotels)	200 gal/room
Restaurants	40 gal/seat or 40 gal/15 ft ² of dining area (whichever is greater)
Schools	
Day Schools	
With cafeteria, gym, and showers	15 gal/student
With cafeteria only	12 gal/student
With neither cafeteria nor showers	10 gal/student
Boarding	60 gal/person
Service Stations	250 gal/water closet or urinal
Stadiums, Auditoriums, Theaters, Drive-ins	5 gal/seat or space
Stores, shopping centers and malls -- Note: if food service is included, add 40 gal/seat	120 gal/1000 ft ²
Swimming Pools and Bathhouses	10 gal/person

- (3) An adjusted daily sewage flow may be granted upon a showing that a sewage system is adequate to meet actual daily water consumption from a facility included in Subparagraph (1) or (2) of this Paragraph. Documented, representative data from that facility or a comparable facility shall be submitted, consisting of at least 12 consecutive monthly total water consumption readings and daily total water consumption readings for at least 30

consecutive days of water use. The daily readings shall be taken during a projected peak sewage flow month. The adjusted design daily sewage flow shall be determined by taking the numerical average of the daily readings that fall within the upper 10 percent of the daily readings when ranked in descending order.

(m) For Treatment and Disposal of Soil Containing Petroleum Products:

- (1) Landfarming of Soils Containing Petroleum Products at Minimum Rates. Petroleum contaminated soils shall be incorporated into the native soils of the receiver site immediately upon application. Liming, fertilization, and aeration of the soils mixture shall be optional, unless otherwise required by the Division. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated remediation site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures approved by the Department, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below analytical detection levels;
- (2) Landfarming of Soil Containing Petroleum Products at Conventional Rates. Landfarming of soils containing petroleum product at an application thickness greater than one inch shall require fertilization, liming, and aeration of the native soils and petroleum contaminated soils mixture as approved by the Division. Application thickness shall be based upon the nature of the receiver site soils, depth to the seasonal high water table, the intended cover crop, and the source of contamination, in accordance with procedures approved by the Division. Operation of the landfarming program shall not result in contravention of classified groundwater or surface water quality standards. Subsequent application of petroleum contaminated soils onto the same receiver site shall not occur for at least 18 months from the date of the most recent application of petroleum contaminated soils and shall cause the receiver site to be reclassified as a "dedicated disposal site" unless the permittee or applicant can demonstrate, through soil sampling and contaminant analytical procedures approved by the Department, that the petroleum contaminant level in the upper eight inches of the receiver site soils is below analytical detection levels;
- (3) Containment and Treatment of Soil Containing Petroleum Products:
 - (A) A containment structure designed to bioremediate or volatilize soil containing petroleum products shall be constructed of either a synthetic liner of at least 30 mils thickness or of a one foot thick liner of natural material, compacted to at least 95 percent standard proctor dry density and with a permeability of less than 1×10^{-7} cm/sec.
 - (B) The bottom of the containment structure shall be at least three feet above the seasonal high water table or bedrock.
 - (C) A leachate collection system must be installed in order to prevent runoff from the petroleum contaminated soils within the containment structure, or steps taken to avoid accumulation of stormwater within the containment structure.
- (4) Disposal of Petroleum Contaminated Soils at Dedicated Sites. Subsequent applications of petroleum contaminated soils at dedicated sites shall not recur until such time as it can be demonstrated, by computer modeling or predictive calculations, that additional applications of contaminated soils will not result in the contravention of any applicable environmental standards. Disposal of petroleum contaminated soils at dedicated sites shall conform to procedures established by the Division.

(n) For Systems Utilizing Infiltration Galleries:

- (1) An infiltration gallery shall be designed such that its largest surface dimension is greater than its depth and no vertical piping shall be installed within the trench.
- (2) An infiltration gallery shall be designed such that discharges from the infiltration gallery which reach the water table must be within the zone of influence of any on-site groundwater recovery system, and must not cause or contribute to the migration of contaminants into previously uncontaminated areas. Predictive modeling shall be used to estimate the zone of influence, infiltration rate, groundwater movement and flow direction.

(o) Additional requirements:

- (1) distance between water supply wells and waste facilities in accordance with Rule 2C .0107(a) of this Chapter or, if a greater area may be impacted, a distance in accordance with the perimeter of compliance described in Subchapter 2L of this Chapter;
- (2) compliance with the groundwater standards specified in Subchapter 2L of this Chapter;
- (3) where applicable compliance with rules on "coastal waste treatment disposal" found in Section .0400 of this Subchapter; and
- (4) For subsurface disposal systems, compliance with rules on subsurface disposal systems found in 15A NCAC 18A .1900. Copies of these Rules are available from the Division of Environmental Health, P. O. Box 29535, Raleigh, North Carolina 27626-0535.

(p) Alternative Design Criteria may be approved by the Director. This approval will only be given in cases where the applicant can demonstrate that the Alternative Design Criteria will provide the following:

- (1) Equal or better treatment of the waste; and
- (2) Equal or better protection of the waters of the state; and
- (3) No increased potential for nuisance conditions.

Statutory Authority G.S. 143-215.1; 143-215.3(a)(1).

Notice is hereby given in accordance with G.S. 150B-21.2 that the EHNR - NC Marine Fisheries Commission intends to amend rules cited as 15A NCAC 31 .0001, .0005; 3J .0103 - .0104, .0107, .0202, .0301, .0401; 3K .0104 - .0105, .0201 - .0202; 3L .0301 - .0302; 3M .0202, .0204, .0301, .0501, .0503 - .0504, .0506 - .0507, .0510 - .0511; 3R .0003 - .0005, .0007, .0011 and adopt rules cited as 15A NCAC 31 .0018; 3J .0402 and 3M .0512.

Temporary: 15A NCAC 3K .0105 was filed as a temporary amendment effective October 9, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner. 15A NCAC 3M .0503 was filed as a temporary amendment effective November 1, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: March 1, 1996.

Public Hearings will be conducted at 7:00 pm on the following dates and locations:

November 2, 1995

NC Aquarium - Auditorium
Airport Road
Roanoke Island
Manteo, NC

November 8, 1995

University of North Carolina
Wilmington Cameron Auditorium - 105
601 S. College Road
Wilmington, NC

November 9, 1995

Duke University Marine Lab Auditorium
Pivers Island
Beaufort, NC

November 13, 1995

Beaufort Community College
Hwy 264
Washington, NC

November 14, 1995

NC Zoological Park
Stedman Education Center
Asheboro, NC

Business Session: The Marine Fisheries Commission will conduct a Business Session on November 30 - December 1, 1995, at the Hatteras Civic Center, Hatteras, NC, beginning at 9:00 am on the morning of November 30, 1995, to decide on these proposed rules.

Reason for Proposed Action:

15A NCAC 31 .0001 - **DEFINITIONS**; to revise the definition for aquaculture operations to include activities dealing with eels and to include a definition for pound nets.

15A NCAC 31 .0005 - **LEAVING DEVICES UNATTENDED**; to clarify when devices are unattended, not in use, and therefore in violation.

15A NCAC 31 .0018 - **DISPOSAL OF EVIDENCE**; to prohibit the practice of throwing illegal products over when an officer is approaching in order to not be cited.

15A NCAC 3J .0103 - **GILL NETS, SEINES, IDENTIFICATION, RESTRICTION**; technical correction which deletes a portion of this rule and includes it in 15A NCAC 3J .0202.

15A NCAC 3J .0104 - **TRAWL NETS**; allows trawling in the channel and a described area adjacent to the channel at Hatteras.

15A NCAC 3J .0107 - **POUND NETS**; establishes a \$250 annual license for each pound net set; further defines inspection procedures to assure that sets are being used; and allows for requirement of culling panels year-round.

15A NCAC 3J .0202 - **ATLANTIC OCEAN**; technical amendment to include restriction now in 15A NCAC 3J .0103; prohibits use of nets larger than 7" for a specified time period; and prohibits use of flynets south of Hatteras.

15A NCAC 3J .0301 - **CRAB, EEL, FISH AND SHRIMP POTS**; further defines escape rings; restricts hours when pots can be fished; and allows pots to be set outside designated areas in Pamlico, Pungo, Bay and Neuse Rivers and adjacent waters during the months of October, May and the first two weeks of June.

15A NCAC 3J .0401 - **FISHING GEAR**; extends proclamation authority to restrict fishing gear to resolve user conflicts for an additional year.

15A NCAC 3J .0402 - **FISHING GEAR RESTRICTIONS**; establishes restrictions for use of fishing gear in areas where conflicts have been identified.

15A NCAC 3K .0104 - **PERMITS FOR PLANTING SHELLFISH FROM POLLUTED AREAS**; amends dates for relaying polluted oysters to leases. This amendment will be required if 15A NCAC 3K .0201 and 3K .0202 is amended.

15A NCAC 3K .0105 - **NON-COMMERCIAL HARVEST OF CRABS AND SHELLFISH**; amendment clarifies General Statute changes in license procedure and restrictions.

15A NCAC 3K .0201 - **OPEN SEASON AND POSSESSION**

LIMIT; extends the allowed oyster season by six weeks; allows for reduction in size limit to 2 ½ inch in order to harvest oysters which would die from disease.

15A NCAC 3K .0202 - SIZE LIMIT AND CULLING TOLERANCE; amendment required by amendment of 15A NCAC 3K .0201.

15A NCAC 3L .0301 - SIZE LIMIT (LOBSTER); deletes proclamation authority and establishes restrictions for American (Northern) lobster.

15A NCAC 3L .0302 - ACTIVITIES PROHIBITED (LOBSTER); establishes restrictions for spiny lobster.

15A NCAC 3M .0202 - SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS (STRIPED BASS); establishes size and creel limits for striped bass taken by hook-and-line in internal coastal waters.

15A NCAC 3M .0204 - SEASON, SIZE AND HARVEST LIMIT: ATLANTIC OCEAN (STRIPED BASS); establishes size and creel limits for striped bass taken by hook-and-line in the Atlantic Ocean.

15A NCAC 3M .0301 - HARVEST LIMIT (MACKEREL); establishes size and creel limits for Spanish and king mackerel taken by hook-and-line.

15A NCAC 3M .0501 - RED DRUM; establishes size and creel limits for red drum taken by hook-and-line.

15A NCAC 3M .0503 - FLOUNDER; requires license to land flounder taken from the Atlantic Ocean; establishes size and creel limits for flounder taken by hook-and-line and by gig; establishes fishing gear specifications for trawls; sets the season for taking flounders by trawls with requirements for closure when quota is reached.

15A NCAC 3M .0504 - TROUT; establishes size and creel limits for spotted seatrout and weakfish.

15A NCAC 3M .0506 - SNAPPER-GROUPER; establishes size and creel limits for fish in the Snapper-Grouper complex taken by hook-and-line.

15A NCAC 3M .0507 - HOOK-AND-LINE FISHING RESTRICTED; establishes size and creel limits for several species of fish taken by hook-and-line.

15A NCAC 3M .0510 - EELS; establishes permitting procedures for taking of undersize eels for aquaculture operations.

15A NCAC 3M .0511 - BLUEFISH; establishes size and creel limits for bluefish taken by hook-and-line.

15A NCAC 3M .0512 - COMPLIANCE WITH FISHERY MANAGEMENT PLANS; establishes procedures for suspension of rules in order to comply with federal fishery management plans.

15A NCAC 3R .0003 - PRIMARY NURSERY AREAS; technical corrections to described areas.

15A NCAC 3R .0004 - PERMANENT SECONDARY NURSERY AREAS; technical corrections to described areas.

15A NCAC 3R .0005 - SPECIAL SECONDARY NURSERY AREAS; technical corrections to described areas.

15A NCAC 3R .0007 - DESIGNATED POT AREAS; amends described areas to allow pots to be set outside designated areas in Pamlico, Pungo, Bay and Neuse Rivers and adjacent waters during the months of October, May and the

first two weeks of June; increases designated pot areas in Bogue Sound.

15A NCAC 3R .0011 - PURSE SEINES PROHIBITED; adds the Atlantic Ocean beaches off Southern Shores (Dare County) to areas where menhaden fishing is restricted.

Comment Procedures: Comments and statements, both written and oral, may be presented at the hearings. Written comments are encouraged and may be submitted to the Marine Fisheries Commission, PO Box 769, Morehead City, NC 28557. These written and oral comments must be received no later than 5:00 pm, November 16, 1995. Oral presentation lengths may be limited depending on the number of people that wish to speak at the public hearing.

Fiscal Note: 15A NCAC 3J .0107 affects the expenditure or distribution of State funds subject to the Executive Budget Act, Article 1 of Chapter 143. The remainder of these rules do not affect the expenditure or distribution of State or local government funds.

CHAPTER 3 - MARINE FISHERIES

SUBCHAPTER 3I - GENERAL RULES

.0001 DEFINITIONS

(a) All definitions set out in G.S. 113, Subchapter IV apply to this Chapter.

(b) The following additional terms are hereby defined:

(1) Commercial Fishing Equipment. All fishing equipment used in coastal fishing waters except:

(A) Seines less than 12 feet in length;

(B) Spears;

(C) A dip net having a handle not more than eight feet in length and a hoop or frame to which the net is attached not exceeding 60 inches along the perimeter;

(D) Hook-and-line and bait-and-line equipment other than multiple-hook or multiple-bait trotline;

(E) A landing net used to assist in taking fish when the initial and primary method of taking is by the use of hook and line; and

(F) Cast Nets.

(2) Fixed or stationary net. A net anchored or staked to the bottom, or some structure attached to the bottom, at both ends of the net.

(3) Mesh Length. The diagonal distance from the inside of one knot to the outside of the other knot, when the net is stretched hand-tight.

(4) Possess. Any actual or constructive holding whether under claim of ownership or not.

(5) Transport. Ship, carry, or cause to be carried or moved by public or private carrier by land, sea, or air.

(6) Use. Employ, set, operate, or permit to be operated or employed.

- (7) Purse Gill Nets. Any gill net used to encircle fish when the net is closed by the use of a purse line through rings located along the top or bottom line or elsewhere on such net.
- (8) Gill Net. A net set vertically in the water to capture fish by entanglement by the gills in its mesh as a result of net design, construction, mesh size, webbing diameter or method in which it is used.
- (9) Seine. A net set vertically in the water and pulled by hand or power to capture fish by encirclement and confining fish within itself or against another net, the shore or bank as a result of net design, construction, mesh size, webbing diameter, or method in which it is used.
- (10) Internal Coastal Waters or Internal Waters. All coastal fishing waters except the Atlantic Ocean.
- (11) Channel Net. A net used to take shrimp which is anchored or attached to the bottom at both ends or with one end anchored or attached to the bottom and the other end attached to a boat.
- (12) Dredge. A device towed by engine power consisting of a frame, tooth bar or smooth bar, and catchbag used in the harvest of oysters, clams, crabs, scallops, or conchs.
- (13) Mechanical methods for clamming. Includes, but not limited to, dredges, hydraulic clam dredges, stick rakes and other rakes when towed by engine power, patent tongs, kicking with propellers or deflector plates with or without trawls, and any other method that utilizes mechanical means to harvest clams.
- (14) Mechanical methods for oystering. Includes, but not limited to, dredges, patent tongs, stick rakes and other rakes when towed by engine power and any other method that utilizes mechanical means to harvest oysters.
- (15) Depuration. Purification or the removal of adulteration from live oysters, clams, and mussels by any natural or artificially controlled means.
- (16) Peeler Crab. A blue crab that has a soft shell developing under a hard shell and having a definite pink, white, or red line or rim on the outer edge of the back fin or flipper.
- (17) Length of finfish. Determined by measuring along a straight line the distance from the tip of the snout with the mouth closed to the tip of the compressed caudal (tail) fin.
- (18) Licensee. Any person holding a valid license from the Department to take or deal in marine fisheries resources.
- (19) Aquaculture operation. An operation that produces artificially propagated stocks of marine or estuarine resources or obtains such stocks from authorized sources for the purpose of rearing in a controlled environment. Eel aquaculture operations using lawfully harvested undersize eels shall be included in this definition. A controlled environment provides and maintains throughout the rearing process one or more of the following: predator protection, food, water circulation, salinity, or temperature controls utilizing proven technology not found in the natural environment.
- (20) Critical habitat areas. The fragile estuarine and marine areas that support juvenile and adult populations of economically important seafood species, as well as forage species important in the food chain. Critical habitats include nursery areas, beds of submerged aquatic vegetation, shellfish producing areas, anadromous fish spawning and anadromous fish nursery areas, in all coastal fishing waters as determined through marine and estuarine survey sampling. Critical habitats are vital for portions, or the entire life cycle, including the early growth and development of important seafood species.
 - (A) Beds of submerged aquatic vegetation are those habitats in public trust and estuarine waters vegetated with one or more species of submerged vegetation such as eelgrass (*Zostera marina*), shoalgrass (*Halodule wrightii*) and widgeongrass (*Ruppia maritima*). These vegetation beds occur in both subtidal and intertidal zones and may occur in isolated patches or cover extensive areas. In either case, the bed is defined by the presence of above-ground leaves or the below-ground rhizomes and propagules together with the sediment on which the plants grow. In defining beds of submerged aquatic vegetation, the Marine Fisheries Commission recognizes the Aquatic Weed Control Act of 1991 (G.S. 113A-220 et. seq.) and does not intend the submerged aquatic vegetation definition and its implementing rules to apply to or conflict with the non-development control activities authorized by that Act.
 - (B) Shellfish producing habitats are those areas in which economically important shellfish, such as, but not limited to clams, oysters, scallops, mussels, and whelks, whether historically or currently, reproduce and survive because of such favorable conditions as bottom type, salinity, currents, cover, and cultch. Included are those shellfish producing areas closed to shellfish harvest due to pollution.
 - (C) Anadromous fish spawning areas are defined as those areas where evidence of spawning of anadromous fish has been documented by direct observation of spawning, capture of running ripe females, or capture of eggs or early larvae.

- (D) Anadromous fish nursery areas are defined as those areas in the riverine and estuarine systems utilized by post-larval and later juvenile anadromous fish.
- (21) Intertidal Oyster Bed. A formation, regardless of size or shape, formed of shell and live oysters of varying density.
- (22) North Carolina Trip Ticket. Multiple-part form provided by the Department to fish dealers who are required to record and report transactions on such forms.
- (23) Transaction. Act of doing business such that fish are sold, offered for sale, exchanged, bartered, distributed or landed. The point of landing shall be considered a transaction when the fisherman is the fish dealer.
- (24) Live rock. Living marine organisms or an assemblage thereof attached to a hard substrate including dead coral or rock (excluding mollusk shells). For example, such living marine organisms associated with hard bottoms, banks, reefs, and live rock may include, but are not limited to:
- (A) Animals:
- (i) Sponges (Phylum Porifera);
 - (ii) Hard and Soft Corals, Sea Anemones (Phylum Cnidaria):
 - (I) Fire corals (Class Hydrozoa);
 - (II) Gorgonians, whip corals, sea pansies, anemones, Solenastrea (Class Anthozoa);
 - (iii) Bryozoans (Phylum Bryozoa);
 - (iv) Tube Worms (Phylum Annelida):
 - (I) Fan worms (Sabellidae);
 - (II) Feather duster and Christmas tree worms (Serpulidae);
 - (III) Sand castle worms (Sabellaridae).
 - (v) Mussel banks (Phylum Mollusca:Gastropoda);
 - (vi) Colonial barnacles (Arthropoda:Crustacea:Megabalanus sp.).
- (B) Plants:
- (i) Coralline algae (Division Rhodophyta);
 - (ii) Acetabularia sp., Udotea sp., Halimeda sp., Caulerpa sp. (Division Chlorophyta);
 - (iii) Sargassum sp., Dictyopteris sp., Zonaria sp. (Division Phaeophyta).
- (25) Coral:
- (A) Fire corals and hydrocorals (Class Hydrozoa);
 - (B) Stony corals and black corals (Class Anthozoa, Subclass Scleractinia);
 - (C) Octocorals; Gorgonian corals (Class Anthozoa, Subclass Octocorallia):
 - (i) Sea fans (Gorgonia sp.);
 - (ii) Sea whips (Leptogorgia sp. and Lophogorgia sp.);
 - (iii) Sea pansies (Renilla sp.).

- (26) Shellfish production on leases and franchises:
- (A) The culture of oysters, clams, scallops, and mussels, on shellfish leases and franchises from a sublegal harvest size to a marketable size.
 - (B) The transplanting (relay) of oysters, clams, scallops and mussels from designated areas closed due to pollution to shellfish leases and franchises in open waters and the natural cleansing of those shellfish.
- (27) Shellfish marketing from leases and franchises. The harvest of oysters, clams, scallops, mussels, from privately held shellfish bottoms and lawful sale of those shellfish to the public at large or to a licensed shellfish dealer.
- (28) Shellfish planting effort on leases and franchises. The process of obtaining authorized cultch materials, seed shellfish, and polluted shellfish stocks and the placement of those materials on privately held shellfish bottoms for increased shellfish production.
- (29) Pound Net. A net that consists of a mesh lead(s), a heart and a pound or pocket with a netting floor which is designed to trap, gill or enclose fish in a confined area where they can be reduced to possession. A "set" shall include one or more pound nets with lead(s), heart, pound and stakes which are set in such a manner as to accommodate such nets.

Statutory Authority G.S. 113-134; 143B-289.4.

.0005 LEAVING DEVICES UNATTENDED

It is unlawful to leave stakes, anchors, nets, pots, buoys, or floating devices in any coastal fishing waters when such devices are not being employed in fishing operations; operations except as otherwise provided by rule or General Statute, and none of the devices in this Rule may be left in any waters during a time when they could not be legally fished in those waters. Devices used in conjunction with fyke and channel net operations which have not been used in fishing operations for 12 consecutive months shall be deemed abandoned and shall be removed by the person or persons responsible for their placement. Any fishing equipment found set in coastal fishing waters in violation of this Section or which contains edible species of fish, unfit for human consumption, may be removed and disposed of at the discretion of the Fisheries Director. It is unlawful to set or have any fishing equipment in coastal fishing waters in violation of this Section or which contains edible species of fish unfit for human consumption.

Statutory Authority G.S. 113-134; 113-137; 113-182; 143B-289.4.

.0018 DISPOSAL OF EVIDENCE

It is unlawful for any person to dispose of fish or parts

thereof, or other matter in any manner, after any communication or signal from an inspector, or after the approach of an inspector or an enforcement vessel.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 3J - NETS, POTS, DREDGES, AND OTHER FISHING DEVICES

SECTION .0100 - NET RULES, GENERAL

.0103 GILL NETS, SEINES, IDENTIFICATION, RESTRICTIONS

(a) The Fisheries Director may, by proclamation, limit or prohibit the use of gill nets or seines in coastal waters, or any portion thereof, or impose any or all of the following restrictions on the use of gill nets or seines:

- (1) Specify area.
- (2) Specify season.
- (3) Specify gill net mesh length except that the mesh length shall not be less than 2 1/2 inches.
- (4) Specify means/methods.
- (5) Specify net number and length.

(b) It is unlawful to use fixed or stationary gill nets in the Atlantic Ocean or any gill nets in internal waters unless such nets are marked by attaching to them at each end two separate yellow buoys which shall be of solid foam or other solid buoyant material no less than five inches in diameter and no less than five inches in length. Gill nets which are not connected together at the top line shall be considered as individual nets, requiring two buoys at the end of each individual net. Gill nets connected together at the top line shall be considered as a continuous net requiring two buoys at each end of the continuous net. Any other marking buoys on gill nets shall be yellow except that one additional identification buoy of any color or any combination of colors may be used at either or both ends. The owner shall always be identified on a buoy on each end either by using engraved buoys or by attaching engraved metal or plastic tags to the buoys. Such identification shall include one of the following:

- (1) Owner's N.C. motor boat registration number, or
- (2) Owner's U.S. vessel documentation name, or
- (3) Owner's last name and initials.

(c) It is unlawful to use gill nets:

- (1) Within 200 yards of any pound net with lead and pound or heart in use;
- (2) From March 1 through October 31 in the Intracoastal Waterway within 150 yards of any railroad or highway bridge.

(d) It is unlawful to use gill nets within 100 feet either side of the center line of the Intracoastal Waterway Channel south of Quick Flasher No. 54 in Alligator River at the southern entrance to the Intracoastal Waterway to the South Carolina line, unless such net is used in accordance with the following conditions:

- (1) No more than two gill nets per boat may be used at any one time;
- (2) Any net used must be attended by the fisherman from a boat who shall at no time be more than 100 yards from either net; and
- (3) Any individual setting such nets shall remove them, when necessary, in sufficient time to permit unrestricted boat navigation.

(e) It is unlawful to use drift gill nets in violation of 15A NCAC 3J .0101(2) and Paragraph (d) of this Rule.

~~(f) It is unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the South Carolina line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.~~

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0104 TRAWL NETS

(a) It is unlawful to use trawl nets for the taking of finfish in internal waters, except that it shall be permissible to take or possess finfish incidental to crab or shrimp trawling in accordance with the following limitations:

- (1) It is unlawful to possess aboard a vessel while using a trawl in internal waters more than 500 pounds of finfish from December 1 through February 28 and 1,000 pounds of finfish from March 1 through November 30.
- (2) The Fisheries Director may, by proclamation, close any area to trawling for specific time periods in order to secure compliance of this Rule.

(b) It is unlawful to use trawl nets:

- (1) In internal coastal waters, between one hour after sunset Friday and one hour before sunset on Sunday;
- (2) For the taking of oysters;
- (3) In Albemarle Sound and its tributaries;
- (4) In the areas described in 15A NCAC 3R .0006, except that trawl nets may be used from May 1 through August 31 within an area described in 15A NCAC 3R .0006(2), the area bounded by the navigation channel marked and maintained by State or Federal agencies, otherwise known as Hatteras Channel, running from Flashing Red Marker 4M "HR" to Green Day Marker "23" to Green Flasher No. 1 to the beginning point;
- (5) From December 1 through February 28 from one hour after sunset to one hour before sunrise in the following areas:
 - (A) In Pungo River north of a line beginning at a point on Wades Point 35° 23' 17" N - 76° 34' 30" W; running 060° (M) to a point on Currituck Point 35° 24' 35" N - 76° 32' 19" W.
 - (B) In Pamlico River west of a line beginning at a

point on the south shore near Fulford Point 35° 19' 52" N - 76° 35' 56" W; running 026° (M) through Flashing Red Marker "1" to a point on Wades Point 35° 23' 17" N - 76° 34' 30" W.

- (C) In Bay River west of a line beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 10" W; running 021° (M) through Flashing Green Marker "1" to a point on Bay Point 35° 11' 01" N - 76° 31' 35" W.
- (D) In Neuse River west of a line beginning at a point off Cherry Point 34° 56' 17" N - 76° 48' 37" W; running 020° (M) through Flashing Red Marker "9" to a point off Wilkinson Point 34° 57' 58" N - 76° 48' 22" W.
- (E) In New River all waters upstream of the N.C. Highway 172 Bridge.

(c) Minimum mesh sizes for shrimp and crab trawls are presented in 15A NCAC 3L .0103 and .0202.

(d) The Fisheries Director may, with prior consent of the Marine Fisheries Commission, by proclamation, require finfish excluder devices or codend modifications in trawl nets to reduce the catch of finfish that do not meet size limits or are unmarketable as individual foodfish by reason of size.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0107 POUND NETS

(a) It is unlawful to use pound or fyke nets in internal coastal fishing waters without the owner's identification being clearly printed on a sign no less than six inches square, securely attached on an outside corner stake of each such net. Such identification must include one of the following:

- (1) For pound nets, the pound net permit gear license number and the owner's last name and initials.
- (2) For fyke nets, the owner's N.C. motorboat registration number or the owner's last name and initials.

Any pound or fyke net or any part thereof found set in internal coastal fishing waters without proper identification will be in violation and may be removed and disposed of in accordance with law.

(b) It is unlawful to set pound nets, or any part thereof except location identification stakes at each end of proposed new locations without first obtaining a Pound Net Permit License from the Fisheries Director.

- (1) For proposed new locations, the Fisheries Director shall issue a public notice of intent to consider issuance of a Pound Net Permit License, and may hold public meetings to take comments on the proposed pound net set. The Fisheries Director shall approve or deny the permit license within 60 days of application.

The Fisheries Director may deny the permit license application if it is determined that granting the permit license will be inconsistent with one or more of the following permitting licensing criteria:

- (A) The application is in the name of an individual.
- (B) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with public navigation.
- (C) The proposed pound net set, either alone or when considered cumulatively with other existing pound net sets in the area, will not unduly interfere with existing, traditional uses of the area other than navigation.
- (D) The proposed pound net set will not interfere with the rights of any riparian or littoral landowner, including the construction or use of piers.
- (E) The proposed pound net set will not, by its proximate location, unduly interfere with existing pound net sets in the area.
- (F) The applicant has in the past complied with fisheries laws related to pound nets.
- (G) The proposed pound net set is in the public interest.

Approval may be conditional based upon the applicant's continuing compliance with specific conditions contained in the Pound Net Permit License that would ensure that the operation of the pound net is consistent with the criteria for permit license denial set out in Parts (A) through (G) of this Subparagraph. The Fisheries Director's final decision to approve or deny the Pound Net Permit License application may be appealed by filing a petition for a contested case hearing, in writing, within 60 days notice of such action, with the Office of Administrative Hearings.

- (2) An application for renewal of an existing Pound Net Permit License shall be filed not less than 10 days prior to the date of expiration of the existing permit license, and will not be processed unless filed by the prior permittee licensee. When a written objection to a renewal has been received during the term of the existing permit license, the Fisheries Director shall review the renewal application under the criteria for issuance of a new Pound Net Permit License, and may decline to renew the permit license accordingly.
- (3) A Pound Net Permit License, whether a new or renewal permit license, shall expire 365 days from the date of issuance.
- (4) The annual fee for Pound Net Licenses is two hundred fifty dollars (\$250.00). This fee applies to new and renewal licenses.

(c) It is unlawful to abandon an existing pound net set without completely removing from the public bottom or coastal waters all stakes and associated structures, gear and equipment within 30 days, or to fail within 30 days to completely remove from the public bottom or coastal waters all stakes and other structures, gear and equipment associated with any pound net set for which a permit license is revoked or denied. For purposes of this subsection, the term "abandonment" shall include the failure of a permittee licensee to ensure that the pound net set has been fully operational within 365 days of the issuance of a Pound Net Permit License. The pound nets shall be inspected during the peak of their respective fishing seasons in order to determine if they are fully operational. Consideration will be given for unusually severe weather conditions which prevent the nets from being fully operational during the inspection period. Herring pounds will be inspected two weeks prior to or after April 1, sciaenid pounds two weeks prior to or after July 15, flounder pounds two weeks prior to or after October 15, bait pounds two weeks prior to or after April 15, and shrimp pounds two weeks prior to or after June 15. A violation under this subsection shall be grounds for the Fisheries Director to revoke any other Pound Net Permits Licenses held by the violator and for denial of any future pound net set proposed by the offender.

(d) It is unlawful to transfer ownership of a pound net without notification to the Division of Marine Fisheries within 30 days of the date of the transfer. Such notification shall be made by the new owner in writing and shall be accompanied by a copy of the previous owner's permit license and an application for a pound-net Pound Net permit License in the new owner's name. Failure to do so shall result in revocation of the pound net permit gear license.

(e) Every pound net set shall have a marked navigational opening of at least 25 feet in width at the end of every third pound. Such opening shall be marked with yellow light reflective tape or devices on each side of the opening. The light reflective tape or devices shall be affixed to a stake of at least three inches in diameter, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions by a vessel approaching the pound net set. In addition, every pound net in internal coastal fishing waters shall have yellow light reflective tape or devices on each pound. The light reflective tape or devices shall be affixed to a stake of at least three inches in diameter on the offshore end of each pound, shall cover a vertical distance of not less than 12 inches, and shall be visible from all directions by a vessel approaching the pound net set. If a permittee licensee notified of a violation under this subsection fails or refuses to take corrective action sufficient to remedy the violation within 15 days of receiving notice of the violation, the Fisheries Director shall revoke the permit license.

(f) In Core Sound, it is unlawful to use pound nets in the following areas except that only those persons holding a valid pound-net Pound Net permit License within the specified area as of March 1, 1994, may renew their permits licenses subject to the requirements of this Rule:

- (1) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 124° (M) to Green Flasher #13; thence 026° (M) to Green Flasher #11; thence 294° (M) to a point on shore north of Great Ditch 34° 58' 54" N - 76° 15' 06" W; thence following the shoreline to Hog Island Point 34° 58' 27" N - 76° 15' 49" W; thence 231° (M) back to Green Day Marker #3.
- (2) That area bounded by a line beginning at Green Day Marker #3 near Hog Island Point running 218° (M) to Cedar Island Point 34° 57' 33" N - 76° 16' 34" W; thence 156° (M) to Red Flasher #18; thence 011° (M) to Red Flasher #2; thence 302° (M) back to Green Marker #3.
- (3) That area bounded by a line beginning on Long Point 34° 56' 52" N - 76° 16' 42" W; thence running 105° (M) to Red Marker #18; thence running 220° (M) to Green Marker #19; thence following the six foot contour past the Wreck Beacon to a point at 34° 53' 45" N - 76° 18' 11" W; thence 227° (M) to Red Marker #26; thence 229° (M) to Green Marker #27; thence 271° (M) to Red Flasher #28; thence 225° (M) to Green Flasher #29; thence 256° (M) to Green Flasher #31; thence 221° (M) to Green Flasher #35; thence 216° (M) to Green Flasher #37; thence 291° (M) to Bells Point 34° 43' 42" N - 76° 29' 59" W; thence north following the shoreline of Core Sound across the mouth of Jarrett Bay, Oyster Creek, Fulcher Creek, Willis Creek, Nelson Bay, Styron Bay, East Thorofare Bay and Rumley Bay, back to Long Point.

(g) In Pamlico Sound, it is unlawful to set a pound net, pound net stakes, or any other related equipment without radar reflective metallic material and yellow light reflective tape or devices on each end of the pound net set. The radar reflective material and the light reflective tape or devices must be affixed to a stake of at least three inches in diameter, must cover a vertical distance of not less than 12 inches, and must be detectable by radar and light from a vessel when approached from all directions. Light reflective tape or devices may be affixed to the radar reflective material.

(h) The Fisheries Director may, by proclamation, ~~between August 1 and January 31,~~ require escape panels in pound nets and may impose any or all of the following restrictions on the use of escape panels:

- (1) Specify size, number, and location.
- (2) Specify mesh length, but not more than six inches.
- (3) Specify time ~~and/or~~ or season.
- (4) Specify areas.

Statutory Authority G.S. 113-134; 113-152; 113-182; 113-221; 143B-289.4.

SECTION .0200 - NET RULES, SPECIFIC AREAS

.0202 ATLANTIC OCEAN

In the Atlantic Ocean:

- (1) It is unlawful to use nets from June 15 through August 15 in the waters of Masonboro Inlet or in the ocean within 300 yards of the beach between Masonboro Inlet and a line running 138° through the water tank on the northern end of Wrightsville Beach, a distance parallel with the beach of 4,400 yards.
- (2) It is unlawful to use trawls within one-half mile of the beach between the Virginia line and Oregon Inlet.
- (3) It is unlawful to use a trawl with a mesh length less than four inches in the main body, three inches in the extension, and one and three-fourths inches in the cod end or tail bag inshore of a line beginning at a point 34° 41' 18" N - 76° 40' 08" W on the western side of Beaufort Inlet Channel (the present location of buoy "11" QK F1); thence westward parallel to and one-half mile from the ocean back to a point 34° 40' 32" N - 76° 53' 45" W off Salter Path.
- (4) It is unlawful to use trawl nets, including flynets, southwest of the 9960-Y chain 40250 LORAN C line (running offshore in a southeasterly direction) from Cape Hatteras to the North Carolina/South Carolina line except:
 - (A) Shrimp trawls as defined in 15A NCAC 3L .0103;
 - (B) Crab trawls as defined in 15A NCAC 3L .0202;
or
 - (C) Flounder trawls as defined in 15A NCAC 3M .0503.
- (5) It is unlawful to use unattended gill nets or block or stop nets in the Atlantic Ocean within 300 yards of the beach from Beaufort Inlet to the South Carolina line from sunset Friday to sunrise Monday from Memorial Day through Labor Day.
- (6) It is unlawful to use gill nets in the Atlantic Ocean with a mesh length greater than 7 inches from April 1 through December 15.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SECTION .0300 - POTS, DREDGES, AND OTHER FISHING DEVICES

.0301 CRAB, EEL, FISH, AND SHRIMP POTS

- (a) It is unlawful to use pots except during time periods and in areas specified herein:
 - (1) From November 1 through April 30 south and east of Rattan Point (Neuse River) and north and east of Willow Point (Rose Bay) and from October 1 through June 14, north of Rattan Point to Willow Point, except that all pots ~~pots~~,

~~except fish pots upstream of U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge,~~ shall be removed from internal waters from January 24 through February 7. The Fisheries Director may, by proclamation, reopen various waters to the use of pots after January 28 if it is determined that such waters are free of pots. Fish pots upstream of the U.S. 17 Bridge across Chowan River and upstream of a line across the mouth of Roanoke, Cashie, Middle and Eastmost Rivers to the Highway 258 Bridge do not have to be removed from internal waters January 24 through February 7.

- (2) From May 1 through October 31, north and east of the Highway 58 Bridge at Emerald Isle to Rattan Point at the mouth of Neuse River and north and east of Willow Point near Rose Bay:
 - (A) In areas described in 15A NCAC 3R .0007(a);
 - (B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas described in 15A NCAC 3R .0007(b) or any part thereof, for the use of pots.
- (3) From June 15 through September 30, north of Rattan Point at the mouth of Neuse River to Willow Point near Rose Bay:
 - (A) In areas described in 15A NCAC 3R .0007(c);
 - (B) To allow for the variable spatial distribution of crustacea and finfish, the Fisheries Director may, by proclamation, specify time periods for or designate the areas described in 15A NCAC 3R .0007(d) or any part thereof, for the use of pots.
- (4) ~~(3)~~ From May 1 through October 31 in the Atlantic Ocean and west and south of the Highway 58 Bridge at Emerald Isle in areas and during time periods designated by the Fisheries Director by proclamation.
 - (b) It is unlawful to use pots in any navigation channel maintained and marked by State or Federal agencies.
 - (c) It is unlawful to use pots unless each pot is marked by attaching a floating buoy which shall be of solid foam or other solid buoyant material and no less than five inches in diameter and no less than five inches in length. Buoys may be of any color except yellow. The owner shall always be identified on the attached buoy by using engraved buoys or by engraved metal or plastic tags attached to the buoy. Such identification shall include one of the following:
 - (1) owner's N.C. motorboat registration number; or
 - (2) owner's U.S. vessel documentation name; or
 - (3) owner's last name and initials.
 - (d) Pots attached to shore or a pier shall be exempt from (a)(2), (a)(3), and (c) of this Rule.
 - (e) It is unlawful to use shrimp pots with mesh lengths

smaller than one and one-fourth inches stretch or five-eighths inch bar.

(f) It is unlawful to use eel pots with mesh sizes smaller than one inch by one-half inch unless such pots contain an escape panel that is at least four inches square with a mesh size of 1" x 1/2" located in the outside panel of the upper chamber of rectangular pots and in the rear portion of cylindrical pots, except that not more than two eel pots per fishing operation with a mesh of any size may be used to take eels for bait.

(g) It is unlawful to use crab pots in coastal waters unless each pot contains no less than two unobstructed escape rings that are at least 2 5/16 inches inside diameter and located in the opposite outside panels of the upper chamber of the pot. Peeler pots with a mesh size less than 1 1/2 inches shall be exempt from the escape ring requirement. The Fisheries Director may, by proclamation, exempt the escape ring requirement in order to allow the harvest of peeler crabs or mature female crabs and may impose any or all of the following restrictions:

- (1) Specify areas, and
- (2) Specify time.

(h) It is unlawful to use more than 150 pots per vessel in Newport River.

(i) It is unlawful to remove crab pots from the water or remove crabs from crab pots between one hour after sunset and one hour before sunrise. Any pots found in violation of this Rule or 15A NCAC 3J .0302 may be removed by marine fisheries enforcement officers and disposed of in accordance with G.S. 113-137.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0400 - FISHING GEAR

.0401 FISHING GEAR

(a) The Fisheries Director in order to address issues involving user conflicts may, by proclamation, close the areas described in Paragraph (b) of this Rule to the use of specific fishing gear.

(b) It is unlawful to use fishing gear as specified by proclamation at the time and dates specified in the proclamation between the Friday before Easter through December 31 in the following areas when such areas have been closed by proclamation:

- (1) All or part of the Atlantic Ocean, up to one-half mile from the beach;
- (2) Up to one-half mile in all directions of Oregon Inlet;
- (3) Up to one-half mile in all directions of Hatteras Inlet;
- (4) Up to one-half mile in all directions of Ocracoke Inlet;
- (5) Up to one-half mile of the Cape Lookout Rock Jetty;
- (6) Up to one-half mile in all directions of fishing

piers open to the public;

- (7) Up to one-half mile in all directions of State Parks;
- (8) Up to one-half mile of marinas as defined by the Coastal Resources Commission.

(c) The Fisheries Director shall specify in the proclamation the boundaries of the closure through the use of maps, legal descriptions, prominent landmarks or other permanent type markers.

(d) The Fisheries Director shall hold a public meeting in the affected area before issuance of proclamations authorized by this Rule.

(e) This Rule will be in effect until July 1, ~~1996~~ 1997.

Statutory Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.4.

.0402 FISHING GEAR RESTRICTIONS

(a) It is unlawful to use commercial fishing gear in the following areas during dates and times specified for the identified areas:

(1) Atlantic Ocean - Dare County:

(A) Nags Head:

(i) Seines and gill nets may not be used from the North Town Limit of Nags Head at Eight Street southward to Gulf Street:

(I) From Wednesday through Saturday of the week of the Nags Head Surf Fishing Tournament held during October of each year the week prior to Columbus Day.

(II) From November 1 through December 15.

(ii) Commercial fishing gear may not be used within 750 feet of licensed fishing piers when open to the public.

(B) Oregon Inlet. Seines and gill nets may not be used from the Friday before Easter through December 31:

(i) Within one-quarter mile of the beach from the National Park Service Ramp #4 (35° 48' 15" N - 75° 32' 42" W) on Bodie Island to the northern terminus of the Bonner Bridge (35° 46' 30" N - 75° 32' 22" W) on Hwy. 12 over Oregon Inlet.

(ii) Within the area known locally as "The Pond", a body of water generally located to the northeast of the northern terminus of the Bonner Bridge.

(C) Cape Hatteras (Cape Point). Seines and gill nets may not be used within one-half mile of Cape Point from the Friday before Easter through December 31. The closed area is defined by a circle with a one-half mile radius having the center at Cape Point (35° 12' 54" N - 75° 31' 43" W). The closed area begins one-half mile north of Cape Point at a point on

- the beach (35° 13' 26" N - 75° 31' 39" W) and extends in a clockwise direction, one-half mile from Cape Point, to a point on the beach (35° 13' 23" N - 75° 31' 59" W) northwest of Cape Point.
- (2) Atlantic Ocean - Onslow and Pender Counties. Commercial fishing gear may not be used during the time specified for the following areas:
- (A) Topsail Beach. From January 1 through December 31, that area around Jolly Rodger Fishing Pier bordered on the offshore side by a line 750 feet from the end of the pier and on the northeast and southwest by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary.
- (B) Surf City:
- (i) From January 1 to June 30, those areas around the Surf City and Barnacle Bill's Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers, on the southwest by a line beginning at a point on the beach one-quarter mile from the piers and on the northeast by a line beginning at a point on the beach 750 feet from the piers extending seaward to intersect the offshore boundaries.
- (ii) From July 1 to December 31, those areas around the piers bordered on the offshore side by a line 750 feet from the ends of the piers, on the southwest by a line beginning at a point on the beach 750 feet from the piers and on the northeast by a line beginning at a point on the beach one-quarter mile from the piers extending seaward to intersect the offshore boundaries.
- (3) Atlantic Ocean - New Hanover County. Carolina Beach Inlet through Kure Beach. Commercial fishing gear may not be used during the times specified for the following areas:
- (A) From the Friday before Easter to November 30, within the zones adjacent to the Carolina Beach, Center and Kure Beach Fishing Piers bordered on the offshore side by a line 750 feet from the ends of the piers and on the north and south by a line beginning at a point on the beach one-quarter mile from the pier extending seaward to intersect the offshore boundary, except the southern boundary for Kure Beach Pier is a line beginning on the beach one mile south of the pier to the offshore boundary for the pier.
- (B) From May 1 to November 30, within 900 feet of the beach, from Carolina Beach Inlet to the southern end of Kure Beach with the following exceptions:
- (i) From one-quarter mile north of Carolina Beach Fishing pier to Carolina Beach Inlet from October 1 to November 30:
- (I) Strike nets may be used within 900 feet of the beach;
- (II) Attended nets may be used between 900 feet and one-quarter mile of the beach.
- (ii) Strike nets and attended gill nets may be used within 900 feet of the beach from October 1 to November 30 in other areas except those described in Part (a)(3)(A) and Subpart (a)(3)(B)(i) of this Rule.
- (iii) It is unlawful to use commercial fishing gear within 900 feet of the beach from Carolina Beach Inlet to New Inlet from October 15 through October 17.
- (b) It is unlawful to use gill nets or seines in the following areas during dates and times specified for the identified areas:
- (1) Neuse River and South River, Carteret County. No more than 1,200 feet of gill net(s) having a stretched mesh of five inches or larger may be used:
- (A) Within one-half mile of the shore from Winthrop Point at Adams Creek to Channel Marker "2" at the mouth of Turnagain Bay.
- (B) Within South River.
- (2) Cape Lookout, Carteret County:
- (A) Gill nets or seines may not be used in the Atlantic Ocean within 300 feet of the Rock Jetty (at Cape Lookout between Power Squadron Spit and Cape Point).
- (B) Seines may not be used within one-half mile of the shore from Power Squadron Spit south to Cape Point and northward to Cape Lookout Lighthouse including the area inside the "hook" south of a line from the COLREGS Demarcation Line across Bardens Inlet to the eastern end of Shackleford Banks and then to the northern tip of Power Squadron Spit from 12:01 A.M. Saturdays until 12:01 A.M. Mondays from May 1 through November 30.
- (3) State Parks/Recreation Areas:
- (A) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Fort Macon State Park, Carteret County.
- (B) Gill nets or seines may not be used in the Atlantic Ocean within one-quarter mile of the shore at Hammocks Beach State Park, Onslow County, from May 1 through October 1, except strike nets and attended gill nets may be used beginning August 15.
- (C) Gill nets or seines may not be used within the boat basin and marked entrance channel at Carolina Beach State Park, New Hanover

County.

- (D) Gill nets and seines may not be used within 900 feet of the beach at Fort Fisher State Recreation Area, New Hanover County and at Baldhead Island State Natural Area, Brunswick County from May 1 through November 30 except strike nets and attended gill nets may be used beginning October 1.
- (4) Mooring Facilities/Marinas. Gill nets or seines may not be used from May 1 through November 30 within:
 - (A) One-quarter mile of the shore from the east boundary fence to the west boundary fence at U.S. Coast Guard Base Fort Macon at Beaufort Inlet, Carteret County;
 - (B) Canals within Pine Knoll Shores, Carteret County;
 - (C) Spooners Creek on Bogue Sound, Carteret County; and
 - (D) Harbor Village Marina on Topsail Sound, Pender County.
- (5) Masonboro Inlet. Gill nets and seines may not be used:
 - (A) Within 300 feet of either rock jetty; and
 - (B) Within the area beginning 300 feet from the offshore end of the jetties to the Intracoastal Waterway including all the waters of the inlet proper and all the waters of Shinn Creek.
- (6) Atlantic Ocean Fishing Piers. At a minimum, gill nets and seines may not be used within 300 feet of ocean fishing piers when open to the public. If a larger closed area has been delineated by the placement of buoys or beach markers as authorized by G.S. 113-185(a), it is unlawful to fish from vessels or with nets within the larger marked zone.
- (7) Topsail Beach, Pender County. It is unlawful to use gill nets and seines from 4:00 P.M. Friday until 6:00 A.M. the following Monday in the three finger canals on the south end of Topsail Beach.
- (8) Atlantic Ocean - Cape Fear River to the South Carolina State Line, Brunswick County:
 - (A) It is unlawful to use gill nets from the beach from Memorial Day through Labor Day.
 - (B) It is unlawful to use unattended nets set from the beach from the Tuesday after Labor Day until Memorial Day. All equipment including but not limited to ropes, anchors and buoys associated with any net set from the beach must be removed immediately when the net is not employed in a fishing operation. On Holden Beach, nets set from the beach may be exempt from this section if a permit is obtained from the Division of Marine Fisheries.
 - (C) It is unlawful to use unattended nets set from a boat within 900 feet of the beach from

Memorial Day through Labor Day.

Statutory Authority G.S. 113-133; 113-134; 113-182; 113-221; 143B-289.4.

SUBCHAPTER 3K - OYSTERS, CLAMS, SCALLOPS AND MUSSELS

SECTION .0100 - SHELLFISH, GENERAL

.0104 PERMITS FOR PLANTING SHELLFISH FROM POLLUTED AREAS

(a) It is unlawful to take oysters or clams from polluted public waters for planting on private bottoms except:

- (1) As authorized by G.S. 113-203, provided such person shall first obtain a permit from the Fisheries Director setting forth the time, area, and method by which such shellfish may be taken.
- (2) Between April 1 through May 15 for clams and for a six week period beginning at the statewide closure of oyster season.

(b) The Fisheries Director, acting upon recommendations of the Division of Environmental Health, shall close and reopen by proclamation any private shellfish beds for which the owner has obtained a permit to relay oysters and clams from polluted public waters.

Statutory Authority G.S. 113-134; 113-182; 113-203; 113-221; 143B-289.4.

.0105 NON-COMMERCIAL HARVEST OF CRABS AND SHELLFISH

(a) It is unlawful for individuals claiming exemption from the ~~shellfish and crab~~ license required by G.S. 113-153-1 or the shellfish license required by G.S. 113-154, by reason of non-commercial ~~harvest~~ use, to take more than:

- (1) One bushel of oysters per person per day, not to exceed two bushels per vessel per day;
- (2) One hundred clams per person per day, not to exceed two hundred clams per vessel per day;
- (3) One-half bushel of scallops per person per day, not to exceed one bushel per vessel per day;
- (4) Fifty blue crabs per person per day not to exceed one hundred blue crabs per vessel per day;
- (5) Ten conchs per person per day not to exceed twenty conchs per vessel per day;
- (6) One hundred mussels per person per day not to exceed two hundred mussels per vessel per day.

(b) It is unlawful to take crabs or shellfish ~~and crabs~~ by mechanical means without having first procured an individual ~~crab~~ license or shellfish ~~and crab~~ license and a vessel license. A vessel license, as required by G.S. 113-152 for the use of other commercial fishing equipment as defined in 15A NCAC 3I .0001(b)(1) is not required for the non-commercial harvest of shellfish in accordance with limits in Paragraph (a) of this Rule.

(c) It is unlawful to take oysters ~~and or~~ clams on Sundays and scallops on Saturdays and Sundays except:

- (1) during open seasons, and
- (2) in accordance with limits outlined in Paragraph (a) of this Rule with or without license.

(d) Unlicensed individuals taking crabs pursuant to G.S. 113-153.1(d) or taking shellfish pursuant to G.S. 113-154 (c1) shall be exempt from the limits established in Paragraphs (a) and (b) of this Rule.

Statutory Authority G.S. 113-134; 113-152; 113-154; 113-182; 143B-289.4.

SECTION .0200 - OYSTERS

.0201 OPEN SEASON AND POSSESSION LIMIT

It is unlawful to take, buy, sell, or possess any oysters from public bottoms except during the open season ~~which begins October 15 for hand harvest, and November 1 for mechanical methods and may extend through March 31.~~ from October 15 through May 15. During any open season that may be allowed within the time periods stated herein, the Fisheries Director may, by proclamation, close and open the season or close and open any of the various waters to the taking of oysters depending on the need to protect small oysters and their habitat, the amount of saleable oysters available for harvest, the number of days harvest is prevented due to unsatisfactory bacteriological samples and weather conditions, and the need to prevent loss of oysters due to parasitic infections and thereby reduce the transmission of parasites to uninfected oysters or other variable conditions and may impose any or all of the following restrictions:

- (1) Specify ~~number of days;~~ days of the week harvesting will be allowed;
- (2) Specify areas;
- (3) Specify means and methods which may be employed in the taking;
- (4) Specify time period; ~~and~~
- (5) Specify the quantity, but shall not exceed possession of more than 50 bushels aboard a ~~vessel.~~ vessel; and
- (6) Specify the minimum size limit by shell length, but not less than 2 1/2 inches.

Statutory Authority G.S. 113-134; 113-182; 113-201; 113-221; 143B-289.4.

.0202 SIZE LIMIT AND CULLING TOLERANCE

(a) It is unlawful to possess oysters which have accumulated dead shell, accumulated oyster cultch material, a shell length of less than ~~three inches~~ that specified by proclamation, or any combination thereof that exceeds a 10 percent tolerance limit by volume. In determining whether the tolerance limit is exceeded, the Fisheries Director and his agents are authorized and empowered to grade all, or any portion, or any combination of portions of the entire

quantity being graded, and in cases of violations, may require seizure and return to public bottom or other disposition as authorized by law.

(b) All oysters shall be culled by the catcher where harvested and all oysters of less than legal size, accumulated dead shell and cultch material, shall be immediately returned to the bottom from which taken.

(c) This Rule shall not apply to oysters imported from out-of-state solely for shucking at shucking houses which are currently certified for shucking and packing by the Division of Environmental Health and which hold a valid shucker-packer license.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 3L - SHRIMP, CRABS, AND LOBSTER

SECTION .0300 - LOBSTER

.0301 AMERICAN LOBSTER (NORTHERN LOBSTER)

It is unlawful to possess northern lobster with a carapace length less than the minimum specified by proclamation. The Fisheries Director may, by proclamation, specify the minimum carapace length for northern lobster recommended by the Atlantic States Marine Fisheries Commission as the result of a duly adopted Interstate Fisheries Management Plan, or adopted as a federal rule by the National Marine Fisheries Service as the result of a duly adopted Regional Fishery Management Plan prepared by the Fishery Management Councils.

- (1) It is unlawful to possess:
 - (a) American lobsters with a carapace less than 3 1/4 inches; or
 - (b) egg bearing American lobsters or American lobsters from which eggs have been stripped, scrubbed or removed.
- (2) American lobster traps must have escape vents and panels as described in 50 CFR 649.21 (d) with the opening no smaller than the entrance funnel.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0302 SPINY LOBSTER

It is unlawful to:

- (1) ~~Possess egg bearing lobster or lobster from which the eggs have been scrubbed;~~
- (2) ~~Land or possess aboard a vessel shucked northern lobster meat, detached tails, claws, or other parts unless accompanied by head sections for the purpose of determining legal size; and~~
- (3) ~~Use or have aboard a vessel lobster traps unless such traps are equipped with escape vents of a size adequate to minimize retention of undersized lobsters.~~

- (1) Sell, trade or barter without a Federal Spiny Lobster vessel permit;
- (2) Possess a egg bearing spiny lobster or a spiny lobster from which eggs have been stripped, scrubbed or removed;
- (3) Possess spiny lobster with a carapace length less than 3 inches;
- (4) Possess aboard a vessel or land more than two spiny lobsters per person;
- (5) Possess aboard a vessel or land detached spiny lobster tails; or
- (6) Take spiny lobsters with a gaff hook, spear or similar device. Possession of a speared, pierced, or punctured spiny lobster is prima facie evidence that prohibited gear was used.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

SUBCHAPTER 3M - FINFISH

SECTION .0200 - STRIPED BASS

.0202 SEASON, SIZE AND HARVEST LIMIT: INTERNAL COASTAL WATERS

(a) The Fisheries Director may, by proclamation, impose any or all the following restrictions on the taking of striped bass in internal coastal waters:

- (1) Specify season or seasons:
 - (A) ~~(a)~~ for hook-and-line fishing,
 - (B) ~~(b)~~ for commercial fishing equipment between October 1 and April 30.
- (2) Specify areas,
- (3) Specify quantity, ~~but shall not exceed possession of more than three fish in any one day taken by hook-and-line,~~
- (4) Specify means/methods,
- (5) Specify size, ~~but the minimum size specified shall not be less than 18 inches total length, size for fish taken by commercial fishing equipment, and~~
- (6) Require submission of statistical and biological data.

Fish that do not meet the minimum size limit specified by proclamation shall immediately be returned to the waters from which taken regardless of condition.

(b) It is unlawful to possess striped bass taken from internal coastal waters less than 18 inches total length.

(c) It is unlawful to possess more than three striped bass per person per day taken by hook-and-line from internal coastal waters.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0204 SEASON, SIZE AND HARVEST LIMIT: ATLANTIC OCEAN

- (a) It is unlawful ~~for any person~~ to possess striped bass

~~taken in from the Atlantic Ocean less than 28 inches total length of less than the size limit as determined by the Atlantic States Marine Fisheries Commission in their Interstate Fisheries Management Plan for striped bass. The Fisheries Director shall issue proclamations necessary to bring North Carolina's size limit in compliance with the Interstate Fisheries Management Plan.~~

(b) It is unlawful to possess more than two striped bass per person per day taken from the Atlantic Ocean by hook-and-line.

(c) ~~(b)~~ It is unlawful to buy, sell, transport, or possess striped bass from the Atlantic Ocean by any means except that the Fisheries Director may establish an open season at any time, and is further empowered to impose any or all of the following restrictions:

- (1) Specify number of days,
- (2) Specify areas,
- (3) Specify means and methods which may be employed in the taking,
- (4) Specify time period,
- (5) Limit the ~~quantity, both commercially and recreationally,~~ quantity taken by commercial gear, and
- (6) Provide for biological sampling of fish harvested.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0300 - SPANISH AND KING MACKEREL

.0301 HARVEST LIMIT

(a) King mackerel:

- (1) It is unlawful to possess king mackerel less than 20 inches fork length.
- (2) It is unlawful to possess more than three king mackerel per person per day taken by hook-and-line.

(b) Spanish mackerel:

- (1) It is unlawful to possess Spanish mackerel less than 12 inches fork length.
- (2) It is unlawful to possess more than 10 Spanish mackerel per person per day taken by hook-and-line.

(c) Persons in possession of a valid National Marine Fisheries Service Coastal Migratory Pelagic (Mackerel) Permit to fish on the commercial mackerel quotas are exempt from the mackerel creel limits established in Paragraphs (a) and (b) of this Rule.

(d) Charter vessels with a valid National Marine Fisheries Service Federal Coastal Migratory Pelagic (Mackerel) Permit must comply with the mackerel creel limits established in Paragraphs (a) and (b) of this Rule when fishing with more than three persons (including the captain and mate) on board.

(e) It is unlawful to possess aboard or land from a vessel, or combination of vessels that form a single operation, more

than 3,500 pounds of Spanish or ~~King-Mackerel~~ king mackerel, in the aggregate, in any one day. The Fisheries Director, ~~Director may may~~, by proclamation, impose any or all of the following restrictions on the taking of Spanish and/or ~~King-Mackerel~~ or king mackerel:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify commercial quantity.
- (4) Specify means/methods.
- (5) Specify size for fish taken by commercial fishing equipment.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SECTION .0500 - OTHER FINFISH

.0501 RED DRUM

(a) The Fisheries Director, may by proclamation, impose any or all of the following restrictions on the taking of red drum:

- (1) Specify areas.
- (2) Specify seasons.
- (3) Specify quantity for fish taken by commercial gear.
- (4) Specify means/methods.
- (5) Specify size for fish taken by commercial gear.

(b) It is unlawful to sell or offer for sale red drum greater than 27 inches total length.

(c) It is unlawful to remove red drum from any type of net with the aid of any boat hook, gaff, spear, gig, or similar device.

(d) It is unlawful to possess red drum less than 18 inches total length.

(e) It is unlawful to possess more than five red drum per person per day taken by hook-and-line of which no more than one may be larger than 27 inches total length.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0503 FLOUNDER

(a) License to Land Flounder from the Atlantic Ocean:

- (1) It is unlawful to land more than 100 pounds per trip of flounder taken from the Atlantic Ocean unless the vessel has been issued a License to Land Flounder from the Atlantic Ocean.
- (2) It is unlawful for a fish dealer to purchase or offload flounder taken from the Atlantic Ocean by a vessel that has not first procured a valid North Carolina License to Land Flounder from the Atlantic Ocean.
- (3) To qualify for a North Carolina License to Land Flounder from the Atlantic Ocean, a vessel is required to have:

- (A) been licensed under G.S. 113-152 or 113-153 during any two of the 1992-93, 1993-94, or

- (B) 1994-95 license years, and landed in North Carolina at least 1,000 pounds of flounder each year from the Atlantic Ocean during any two of the 1992-93, 1993-94, or 1994-95 license years for which the vessel was licensed to land in North Carolina.
- (4) At least ten days prior to issuance, applicants for the license shall complete an application form provided by the Division of Marine Fisheries and submit it to the North Carolina Division of Marine Fisheries, Post Office Box 769, 3441 Arendell Street, Morehead City, North Carolina 28557. The following information is required:
 - (A) Valid documentation papers or current motor boat registration or copy thereof;
 - (B) Proof of required licenses and flounder landings data for that vessel during the years the vessel was licensed.
- Licenses will be issued to qualifying vessels at no fee and only from the Morehead City Office of the Division of Marine Fisheries.
- (5) Licenses may only be transferred:
 - (A) with the transfer of the ownership of a vessel holding a License to Land Flounder from the Atlantic Ocean to the new owner of that vessel, or
 - (B) by the owner of a vessel to another vessel under the same ownership. The vessel owner is only eligible for the same number of Licenses to Land Flounder from the Atlantic Ocean for which his boats qualify.
 - (C) any transfer of license under this Paragraph must be facilitated through the Division of Marine Fisheries Morehead City Office only.
- (6) It is unlawful for any individual to land flounder from the Atlantic Ocean without having ready at hand for inspection a valid License to Land Flounder from the Atlantic Ocean, except as specified in Subparagraph (c)(1) of this Rule.
- (7) Suspension or Revocation:
 - (A) A License to Land Flounder from the Atlantic Ocean issued under this rule shall be subject to suspension or revocation pursuant to the provisions of 15A NCAC 3P, et seq., except that this license shall be subject to revocation pursuant to the provisions of G.S. 113-166 when the licensee is convicted of a criminal offense within the jurisdiction of the Department under the provisions of Subchapter IV of Chapter 113 of the General Statutes, or of the rules of the Marine Fisheries Commission adopted under the authority of that Subchapter.
 - (B) The Division may commence proceedings under 15A NCAC 3P, et seq., for suspension or revocation of a License to Land Flounder from the Atlantic Ocean if it finds:
 - (i) the license was obtained by providing any

false information or willfully omitting required information when the information is material to the securing of the license; or

- (ii) the license was falsified, fraudulently altered, or counterfeited; or
- (iii) the licensee practices any fraud or deception designed to evade the provisions of this rule or reasonable administrative directives made under the authority of this rule or G.S. 113-182(b)(3).

(b) It is unlawful to transfer flounder taken from the Atlantic Ocean from one vessel to another.

(c) ~~(a)~~ It is unlawful to possess flounder less than 13 inches in length.

(d) It is unlawful to possess flounder less than 14 inches total length taken by hook-and-line or gig from the Atlantic Ocean.

(e) It is unlawful to possess more than 8 flounder per person per day taken by hook-and-line or gig from the Atlantic Ocean.

(f) It is unlawful to possess more than 8 flounder per person per day taken by gig from internal coastal waters.

(g) Persons with a vessel endorsement to sell or a nonvessel endorsement to sell are exempt from the possession limit in Paragraphs (e) and (f) of this Rule.

(h) ~~(b)~~ Between October 1 and April 30, it shall be unlawful to use a trawl in the Atlantic Ocean within three miles of the ocean beach from the North Carolina/Virginia state line (35° 33' N) to Cape Lookout (34° 36' N) unless each trawl has a cod end (tailbag) mesh length greater than 5 1/2 inches diamond mesh (stretched) or 6 inches square mesh (stretched) applied throughout the cod end for at least 75 continuous meshes forward of the terminus (end) of the net, or the terminal one-third portion of a net, measured from the terminus of the cod end to the head rope for cod ends with less than 75 meshes, except as provided in Paragraphs (e) and (f) of this Rule. The Fisheries Director may, by proclamation:

- (1) ~~establish fishing gear specifications for trawls used within three nautical miles of the beach from October 1 through April 30 in order to protect small flounder, and~~
- (2) ~~close and open the season in the Atlantic Ocean to the taking of flounder with regard to quota management in accordance with the Mid-Atlantic Fisheries Management Council Fishery Management Plan for the Summer Flounder Fishery.~~

It is unlawful to violate the provisions of any proclamation issued under this authority.

(i) Tailbag liners of any mesh size, the multiple use of two or more cod ends, or other netting material that in any way could restrict the legal size mesh required by this Rule, many not be used or possessed on the deck of a vessel in the Atlantic Ocean between October 1 and April 30 from the North Carolina/Virginia state line (36° 33' N) to Cape Lookout (34° 36' N).

(j) Trawls with a cod end mesh size smaller than described in Subsection (b) may be used or possessed on the deck of a vessel provided not more than 100 pounds of flounder per trip from May 1 through October 31 or more than 200 pounds from November 1 through April 30 is possessed aboard or landed from that vessel.

(k) Flynets are exempt from the flounder trawl mesh requirements if they meet the following definition:

- (1) The net has large mesh in the wings that measure 8 inches to 64 inches;
- (2) The first body section (belly) of the net has 35 or more meshes that are at least 8 inches; and
- (3) The mesh decreases in size throughout the body of the net to as small as 2 inches or smaller towards the terminus of the net.

(l) Season.

- (1) The North Carolina season for landing ocean-caught flounder will open January 1 each year. If 70 percent of the quota allocated to North Carolina in accordance with the joint Mid-Atlantic Fisheries Management Council-Atlantic States Marine Fisheries Commission Fishery Management Plan for Summer Flounder is projected to be taken, the Fisheries Director shall, by proclamation, close North Carolina ports to landing of flounder taken from the ocean.
- (2) During the closed season, vessels may land up to 100 pounds of flounder per trip taken from the Atlantic Ocean.
- (3) The season for landing flounder taken in the Atlantic Ocean shall reopen November 1.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0504 TROUT

(a) Spotted seatrout (speckled trout). It is unlawful to possess spotted seatrout less than 12 inches total length in length.

(b) Weakfish (gray trout).

- (1) The Fisheries Director may, by proclamation, impose any or all of the following restrictions on the taking of weakfish by commercial gear:
 - (A) (1) Specify areas.
 - (B) (2) Specify seasons.
 - (C) (3) Specify quantity.
 - (D) (4) Specify means/methods.
 - (E) (5) Specify size, but not greater than 12 inches total length.
 - (A) ~~But not greater than 12 inches for weakfish taken by any method other than hook and line;~~
 - (B) ~~But not greater than 14 inches for weakfish taken by hook and line.~~
- (2) Weakfish taken by hook-and-line:
 - (A) It is unlawful to possess weakfish less than 12 inches total length taken by hook-and-line.
 - (B) It is unlawful to possess more than four weak-

fish per person per day taken by hook-and-line.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

.0506 SNAPPER-GROUPER

(a) The Fisheries Director may, by proclamation, impose any or all of the following restrictions in the fishery for species of the snapper-grouper complex listed in the South Atlantic Fishery Management Council Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic Region:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

(b) It is unlawful to possess black sea bass less than eight inches total length taken south of Cape Hatteras (35° 15' N, Latitude).

(c) It is unlawful to possess gag grouper (gray grouper) less than 20 inches total length.

(d) It is unlawful to possess black grouper less than 20 inches total length.

(e) It is unlawful to possess red snapper less than 20 inches total length.

(f) It is unlawful to possess red grouper less than 20 inches total length.

(g) It is unlawful to possess yellowfin grouper (fireback grouper) less than 20 inches total length.

(h) It is unlawful to possess scamp less than 20 inches total length.

(i) It is unlawful to possess yellowmouth grouper less than 20 inches total length.

(j) Greater amberjack:

- (1) It is unlawful to possess greater amberjack less than 36 inches fork length except that persons fishing under the bag limit established in Subparagraph (2) of this Paragraph may possess a minimum 28 inch amberjack.
- (2) It is unlawful to possess more than three greater amberjack per person per day.

(k) Vermilion Snapper:

- (1) It is unlawful to possess vermillion snapper (beeliner) less than 12 inches total length except that persons fishing under the bag limit established in Subparagraph (2) of this Paragraph may possess 10 inch vermillion snapper.
- (2) It is unlawful to possess more than 10 vermillion snapper per person per day taken for non-commercial purposes.

(l) It is unlawful to possess silk snapper (yelloweye snapper) less than 12" total length.

(m) It is unlawful to possess blackfin snapper (hambone snapper) less than 12" total length.

(n) It is unlawful to possess red porgy (pink or silver snapper) less than 12 inches total length.

(o) Speckled hind (Kitty Mitchell) and Warsaw grouper:

- (1) It is unlawful to sell or offer for sale speckled hind or Warsaw grouper.
- (2) It is unlawful to possess more than one speckled hind or one Warsaw group per vessel per trip.

(p) Combined Bag Limit for Snapper. It is unlawful to possess more than 10 vermillion snappers and 10 other species of snappers, of which no more than two may be red snapper, taken in any one day unless fishing aboard a vessel holding a federal vessel permit for snapper-grouper authorizing the bag limit to be exceeded.

(q) Combined Bag Limit for Grouper:

- (1) It is unlawful to possess more than five grouper taken in any one day unless fishing aboard a vessel holding a federal vessel permit for snapper-grouper authorizing the bag limit to be exceeded.
- (2) Vessels holding a federal permit authorizing the bag limit to be exceeded may not possess more than one speckled hind or one Warsaw grouper.

(r) It is unlawful to possess Nassau grouper or jewfish.

(s) Fish Traps/Pots:

- (1) It is unlawful to use or have on board a vessel fish traps for taking snappers and groupers except sea bass pots as allowed in Subparagraph (2) of this Paragraph.
- (2) Sea bass may be taken with pots that conform with the federal rule requirements for mesh sizes and pot size as specified in 50 CFR Part 646.2 and openings and degradable fasteners specified in 50 CFR Part 646-22 (c) (2) (i).

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0507 RECREATIONAL FISHING RESTRICTIONS

The Fisheries Director may, by proclamation, establish size and harvest limit restrictions for the following species taken by hook and line:

- (1) ~~Blue marlin;~~
- (2) ~~White marlin;~~
- (3) ~~Sailfish;~~
- (4) ~~Cobia;~~
- (5) ~~Dolphin;~~
- (6) ~~Spotted seatrout;~~
- (7) ~~Tunas; and~~
- (8) ~~Flounder.~~

(a) Blue marlin:

- (1) It is unlawful to possess blue marlin less than 86 inches in length from the lower jaw to the fork in the tail.
- (2) It is unlawful to possess more than one blue marlin per person per day.

(b) White marlin:

- (1) It is unlawful to possess white marlin less than

62 inches in length from the lower jaw to the fork in the tail.

- (2) It is unlawful to possess more than one white marlin per person per day.

(c) Sailfish:

- (1) It is unlawful to possess sailfish less than 57 inches in length from the lower jaw to the fork in the tail.

- (2) It is unlawful to possess more than one sailfish per person per day.

(d) Cobia:

- (1) It is unlawful to possess cobia less than 33 inches fork length taken by hook-and-line.

- (2) It is unlawful to possess more than two cobia per person per day taken by hook-and-line.

(e) Dolphin:

- (1) It is unlawful to possess more than 10 dolphin per person per day.

- (2) Exemptions:

(A) Charter vessels with a valid National Marine Fisheries Service Charter Vessel Coastal Migratory Pelagic Permit and licensed by the U.S. Coast Guard to carry six or less passengers for hire, may possess a maximum of 60 dolphin per day regardless of the number of people on board.

(B) Vessels with a valid commercial National Marine Fisheries Service Federal Coastal Migratory Pelagic Permit including charterboats when fishing with three or less persons (including captain and mate) on board are exempt from the creel limits set out in Subparagraph (d)(1) of this Rule.

(f) It is unlawful to possess yellowfin tuna less than 22 inches fork length taken by hook-and-line.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0510 EELS

(a) It is unlawful to possess, sell or take eels less than six inches in length. Tolerance of not more than 20 eels per person per day shall be allowed.

(b) The Fisheries Director may issue a permit allowing harvest during the months of February, March, and April and possession of eels less than six (6) inches in length for bona fide aquaculture operations engaged in the cultivation of eels. Aquaculture operations must demonstrate that they are bona fide aquaculture operations by showing:

- (1) a license or a permit for aquaculture operations;
(2) the nature of its facilities or operations are sufficient for eel aquaculture.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

.0511 BLUEFISH

(a) In order to comply with the management requirements

incorporated in the Fishery Management Plan for Bluefish developed cooperatively by the Mid-Atlantic Fishery Management Council and the Atlantic States Marine Fisheries Commission, the Fisheries Director may, by proclamation, take any or all of the following actions in the bluefish commercial fishery:

- (1) Specify size;
- (2) Specify seasons;
- (3) Specify areas;
- (4) Specify quantity;
- (5) Specify means/methods; and
- (6) Require submission of statistical and biological data.

(b) It is unlawful to possess bluefish less than 12 inches total length taken by hook-and-line.

(c) It is unlawful to possess more than 20 bluefish per person per day taken by hook-and-line.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0512 COMPLIANCE WITH FISHERY MANAGEMENT PLANS

In order to comply with management requirements incorporated in Federal Fishery Management Council Management Plans or Atlantic States Marine Fisheries Commission Management Plans, the Fisheries Director may, by proclamation, suspend the minimum size and harvest limits established by the Marine Fisheries Commission, and implement different minimum size and harvest limits. Proclamations issued under this Section shall be subject to approval, cancellation, or modification by the Marine Fisheries Commission at its next regularly scheduled meeting or an emergency meeting held pursuant to G.S. 113-221 (e1).

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

SUBCHAPTER 3R - DESCRIPTIVE BOUNDARIES

.0003 PRIMARY NURSERY AREAS

The primary nursery areas referenced in 15A NCAC 3N .0004 are delineated in the following coastal water areas:

- (1) In the Roanoke Sound Area:
 - (a) Shallowbag Bay:
 - (i) Dough Creek, northwest of a line beginning at a point on the east shore 35° 54' 28" N -- 75° 40' 00" W; running 242° (M) to a point on the west shore 35° 54' 19" N -- 75° 40' 09" W;
 - (ii) Scarborough Creek, all waters south of a line beginning at a point on the east shore 35° 54' 00" N -- 75° 39' 33" W; running 246° (M) to a point on the west shore 35° 53' 59" N -- 75° 39' 36" W.
 - (b) Broad Creek, north of a line beginning at a point

- on the east shore 35° 52' 24" N -- 75° 38' 26" W; running 306° (M) to a point on the west shore 35° 52' 22" N -- 75° 38' 30" W.
- (2) In the Northern Pamlico Sound Area:
- (a) Long Shoal River:
- (i) Long Shoal River, west of a line beginning at a point on the north shore 35° 38' 00" N -- 75° 52' 57" W; running 208° (M) to a point on the south shore 35° 37' 47" N -- 75° 53' 03" W;
- (ii) Deep Creek, east of a line beginning at a point on the north shore 35° 37' 50" N -- 75° 52' 14" W; running 204° (M) to a point on the south shore 35° 37' 38" N -- 75° 52' 18" W;
- (iii) Broad Creek, west of a line beginning at a point on the north shore 35° 35' 57' 58" N -- 75° 53' 42" W; running 209° (M) to a point on the south shore 35° 35' 46' 40" N -- 75° 53' 49' 41" W;
- (iv) Muddy Creek, east of a line beginning at a point on the north shore 35° 36' 24" N -- 75° 52' 08" W; running 181° (M) to a point on the south shore 35° 36' 15" N -- 75° 52' 10" W;
- (v) Pains Bay, north of a line beginning at a point on the west shore 35° 35' 26" N -- 75° 49' 12" W; running 097° (M) to a point on the east shore 35° 35' 26" N -- 75° 48' 50" W;
- (vi) Otter Creek, southwest of a line beginning at a point on the east shore 35° 33' 07' 12" N -- 75° 55' 54' 00' 57" W; running 277° (M) to a point on the west shore 35° 33' 07' 18" N -- 75° 55' 45' 16" W;
- (vii) Clark Creek, northeast of a line beginning at a point on the north shore 33° 35' 45' 47" N - 75° 51' 30' 29" W; running 158° (M) to a point on the south shore 35° 35' 46' 42" N - 75° 51' 28' 27" W;
- (b) Far Creek, east of a line beginning at a point on Gibbs Point 35° 30' 06" N -- 75° 57' 46" W; running 007° (M) to a point on the east shore 35° 30' 53" N -- 75° 57' 46" W;
- (c) Middletown Creek, west of a line beginning at a point on the north shore 35° 28' 26' 27" N -- 75° 59' 55' 49" W; running 097° (M) to a point on the south shore 35° 28' 06" N -- 75° 59' 55' 48" W;
- (d) Wysocking Bay:
- (i) Lone Tree Creek, east of a line beginning at a point on the south shore 35° 25' 06" N -- 76° 02' 06" W; running 342° (M) to a point on the north shore 35° 25' 33' 36" N -- 76° 02' 48' 22" W;
- (ii) Wysocking Bay, north of a line beginning at a point on the east shore 35° 25' 55' 56" N -- 76° 02' 58' 55" W; running 265° (M) to a point on the west shore 35° 25' 44' 47" N -- 76° 03' 33' 42" W;
- (iii) Douglas Bay, northwest of a line beginning at a point on Mackey Point 35° 25' 44' 15" N -- 76° 03' 44' 15" W; running 229° (M) to a point on the south shore 35° 24' 50' 48" N -- 76° 03' 42' 39" W;
- (iv) Tributaries west of Brown Island, west of a line beginning at a point on the north shore of Brown Island 35° 24' 40' 12" N -- 76° 04' 24' 29" W; running 007° (M) to a point 35° 24' 24' 23" N -- 76° 04' 24' 30" W; and north of a line beginning at a point on the most southern point of Brown Island 35° 23' 54' 48" N -- 76° 04' 32' 30" W; running 277° (M) to a point on the west shore 35° 23' 54' 36" N -- 76° 04' 48' 54" W;
- (e) East Bluff Bay, Harbor Creek east of a line beginning at a point on the south shore 35° 21' 25" N - 76° 07' 48" W; running 323° (M) to a point on the north shore 35° 21' 34' 33" N - 76° 07' 56' 55" W;
- (f) Cuning Harbor tributaries, north of a line beginning at a point on the east shore 35° 20' 40' 42" N - 76° 12' 45' 14" W; running 280° (M) to a point on the west shore 35° 20' 42' 43" N - 76° 12' 37' 38" W;
- (g) Juniper Bay:
- (i) Upper Juniper Bay, north of a line beginning at a point on the east shore 35° 23' 09" N - 76° 15' 00" W; running 277° (M) to a point on the west shore 35° 23' 09" N - 76° 15' 12" W;
- (ii) Rattlesnake Creek, west of a line beginning at a point on the north shore 35° 22' 55" N - 76° 15' 19" W, running 211° (M) to a point on the south shore 35° 22' 50" N - 76° 15' 21" W;
- (iii) Buck Creek, east of a line beginning at a point on the south shore 35° 21' 22" N - 76° 13' 46" W; running 328° (M) to a point on the north shore 35° 21' 29" N - 76° 13' 54" W;
- (iv) Laurel Creek, east of a line beginning at a point on the north shore 35° 20' 38" N - 76° 13' 21" W; running 170° (M) to a point on the south shore 35° 20' 36" N - 76° 13' 22" W;
- (v) Old Haulover, west of a line beginning on the south shore 35° 21' 58" N - 76° 15' 36' 34" W; running 008° (M) to a point on the north shore 35° 22' 05' 04" N - 76° 15' 35" W;
- (h) Swanquarter Bay:
- (i) Upper Swanquarter Bay, north of a line beginning on the east shore and running 270° (M) through Day Marker No. 7 to the west shore;
- (ii) Oyster Creek, east of a line beginning at a point on the north shore 35° 23' 06' 09" N -- 76° 18' 19' 58' 00" W; running 187° (M) to a

point on the south shore 35° 22' 00 59" N -- 76° 18' 58 56" W;

(iii) Caffee Bay:

- (A) Unnamed tributary, north of a line beginning at a point on the west shore 35° 22' 09" N - 76° 18' 52" W; running 111° (M) to a point on the east shore 35° 22' 06" N - 76° 18' 45" W;
- (B) Unnamed tributary, north of a line beginning at a point on the east shore 35° 22' 05" N - 76° 18' 12" W; running 288° (M) to a point on the west shore 35° 22' 09" N - 76° 18' 28" W;
- (C) Upper Caffee Bay (Haulover), east of a line beginning at a point on the south shore 35° 21' 43 42" N - 76° 17' 25 17" W; running 330° (M) to a point on the north shore 35° 21' 52 55" N - 76° 17' 26 25" W.

(i) Rose Bay:

- (i) Rose Bay, north of a line beginning at a point on Watch Point 35° 26' 52" N -- 76° 25' 02" W; running 272° (M) to Channel Marker No. 6; thence 248° (M) to a point on the west shore 35° 26' 40" N -- 76° 25' 30" W;
- (ii) Island Point Creek, west of a line beginning at a point on the north shore 35° 25 26' 59 03" N - 76° 25' 06 05" W; running 154° (M) to a point on the south shore 35° 25' 54 55" N - 76° 25' 00 02" W;
- (iii) Tooley Creek, west of a line beginning on the north shore 35° 25' 26 30" N -- 76° 25' 30 34" W; running 187° (M) to a point on the south shore 35° 25' 09 11" N -- 76° 25' 30 33" W;
- (iv) Broad Creek, east of a line beginning at a point on the south shore ~~35° 23' 54" N - 76° 23' 34" W~~ 35° 24' 15" N - 76° 23' 36" W; running 023° (M) to a point ~~35° 24' 15" N - 76° 26' 10" W~~ 35° 24' 29" N - 76° 23' 24" W; thence 080° (M) to a point ~~35° 24' 18" N - 76° 25' 57" W~~;
- (v) Lightwood Snag Bay, west and north of a line beginning at a point on the south shore 35° 23' 54" N - 76° 26' 18" W running 023° (M) to a point 35° 24' 15" N - 76° 26' 10" W; thence 080° (M) to a point 35° 24' 18" N - 76° 25' 57" W;

(vi) Deep Bay:

- (A) Old Haulover, north of a line beginning at a point on the west shore 35° 23' 09 12" N - 76° 22' 52 54" W; running 101° (M) to a point on the east shore 35° 23' 09 10" N - 76° 22' 46 45" W;
- (B) Drum Cove (Stinking Creek), south of a line beginning at a point on the west shore 35° 22' 32" N - 76° 24' 44" W; running

122° (M) to a point on the east shore 35° 22' 26" N - 76° 24' 28" W;

- (vii) Eastern tributaries (Cedar Hammock and Long Creek), east of a line beginning at a point on the north shore 35° 24' 53" N - 76° 23' 12" W; running 206° (M) to a point on the south shore 35° 24' 39 40" N - 76° 23' 18" W;

(j) Spencer Bay:

(i) Germantown Bay:

- (A) Ditch Creek, west of a line beginning at a point on the north shore 35° 24' 11" N -- 76° 27' 54" W; running 224° (M) to a point on the south shore 35° 24' 05" N -- 76° 27' 59" W;
- (B) Jenette Creek, west of a line beginning at a point on the north shore 35° 24' 30 32" N - 76° 27' 40 35" W; running 204° (M) to a point on the south shore 35° 24' 25 24" N - 76° 27' 40" W;
- (C) Headwaters at northeast of a line beginning at a point on the northwest shore 35° 24' 50" N - 76° 27' 46 17" W; running 158° (M) to a point on the southeast shore 35° 24' 30 37" N - 76° 27' 26' 44 54" W;
- (D) Swan Creek, southeast of a line beginning at a point on the north shore 35° 24' 30 29" N - 76° 27' 11" W; running 234° (M) to a point on the south shore 35° 24' 24 23" N - 76° 27' 47 18" W;
- (ii) Unnamed western tributary, west of a line beginning at a point on the south shore 35° 22' 48" N -- 76° 28' 19" W; running 356° (M) to a point on the north shore 35° 22' 59" N -- 76° 28' 21" W;
- (iii) Unnamed tributary, west of a line beginning on the south shore 35° 23' 04 02" N - 76° 28' 36 35" W; running 016° (M) to a point on the north shore 35° 23' 08" N - 76° 28' 35 34" W;
- (iv) Unnamed tributary, west of a line beginning at a point on the south shore 35° 23' 21 20" N - 76° 28' 37 36" W; running 306° (M) to a point on the north shore 35° 23' 25 26" N - 76° 28' 46" W;
- (v) Unnamed tributaries, northwest of a line beginning at a point on the north shore 35° 23' 45" N - 76° 28' 38 36" W; running 231° (M) to a point on the south shore 35° 23' 30" N - 76° 28' 48" W;
- (vi) Upper Spencer Bay, northwest of a line beginning at a point on the south shore 35° 24' 00" N - 76° 28' 48" W; running 028° (M) to a point on the north shore 35° 24' 23" N - 76° 28' 36" W;
- (vii) Swan Creek, east of a line beginning at a point on the south shore 35° 23' 51" N - 76° 27' 26" W; running 018° (M) to a point on the

- north shore $35^{\circ} 24' 02''$ N - $76^{\circ} 27' 25''$ W;
- (k) Long Creek, north of a line beginning at a point on the west shore $35^{\circ} 22' 26''$ N - $76^{\circ} 29' 00''$ W; running 119° (M) to a point on the east shore $35^{\circ} 22' 21''$ N - $76^{\circ} 28' 49''$ W;
- (l) Willow Creek, east of a line beginning at a point on the north shore $35^{\circ} 23' 06' 08''$ N - $76^{\circ} 28' 29' 54''$ W; running 137° (M) to a point on the south shore $35^{\circ} 23' 04' 02''$ N - $76^{\circ} 28' 29' 45' 46''$ W;
- (m) Abels Bay, above a line beginning at a point on the west shore $35^{\circ} 24' 04' 06''$ N -- $76^{\circ} 30' 24''$ W; running 132° (M) to a point on the east shore $35^{\circ} 23' 24' 57' 00''$ N -- $76^{\circ} 30' 09''$ W; thence 204° (M) to a point on the south shore $35^{\circ} 23' 40' 42''$ N -- $76^{\circ} 30' 14''$ W;
- (n) Crooked Creek, north of a line beginning at a point on the east shore $35^{\circ} 24' 24' 24''$ N - $76^{\circ} 32' 04''$ W; running 282° (M) to a point on the west shore $35^{\circ} 24' 27' 25''$ N - $76^{\circ} 32' 14''$ W.
- (3) In the Pungo River Area:
- (a) Fortescue Creek:
- (i) Headwaters of Fortescue Creek, southeast of a line beginning at a point on the southwest shore $35^{\circ} 25' 26''$ N -- $76^{\circ} 30' 42''$ W; running 060° (M) to a point on the northeast shore $35^{\circ} 25' 30''$ N -- $76^{\circ} 30' 33''$ W;
- (ii) Warner Creek, north of a line from a point on the east shore $35^{\circ} 26' 18''$ N -- $76^{\circ} 31' 30''$ W; running 262° (M) to a point on the west shore $35^{\circ} 26' 16''$ N -- $76^{\circ} 31' 36''$ W;
- (iii) Island Creek, north of a line beginning at a point on the west shore $35^{\circ} 26' 04''$ N -- $76^{\circ} 32' 22''$ W; running 093° (M) to a point on the east shore $35^{\circ} 26' 06''$ N -- $76^{\circ} 32' 18''$ W;
- (iv) Dixon Creek, south of a line beginning at a point above Lupton Point $35^{\circ} 25' 34''$ N -- $76^{\circ} 31' 54''$ W; running 279° (M) to a point on the west shore $35^{\circ} 25' 35''$ N -- $76^{\circ} 31' 44''$ W;
- (v) Pasture Creek, north of a line beginning at a point on the east shore $35^{\circ} 26' 00' 02''$ N -- $76^{\circ} 31' 54' 50''$ W; running 277° (M) to a point above Pasture Point $35^{\circ} 26' 25' 00' 56''$ N -- $76^{\circ} 31' 57' 55''$ W;
- (vi) ~~All tributaries on the northeast shore of lower Fortescue Creek, northeast of a line beginning at a point $35^{\circ} 26' 05''$ N -- $76^{\circ} 21' 12''$ W; running 135° (M) to a point $35^{\circ} 25' 36''$ N -- $76^{\circ} 30' 36''$ W; Cox, Snell, and Seer Creeks, northeast of a line beginning at a point on the north shore $35^{\circ} 26' 05''$ N -- $76^{\circ} 31' 12''$ W; running 134° (M) to a point on the south shore $35^{\circ} 25' 51''$ N -- $76^{\circ} 30' 53''$ W;~~
- (vii) Unnamed tributary on the north side of Fortescue Creek northeast of a line beginning at a point on the north shore $35^{\circ} 24' 48''$ N -- $76^{\circ} 30' 49''$ W; running 144° (M) to a point on the south shore $35^{\circ} 25' 44''$ N -- $76^{\circ} 30' 44''$ W;
- (viii) Runway Creek, northeast of a line beginning at point on the north shore $35^{\circ} 25' 40''$ N -- $76^{\circ} 30' 41''$ W; running 148° (M) to a point on the south shore $35^{\circ} 25' 35''$ N -- $76^{\circ} 30' 36''$ W;
- (b) Slade Creek:
- (i) Slade Creek, south of a line beginning at a point above Jones Creek $35^{\circ} 27' 56''$ N -- $76^{\circ} 30' 44''$ W; running 102° (M) to a point on the north shore $35^{\circ} 27' 54''$ N -- $76^{\circ} 30' 33''$ W;
- (ii) Jarvis Creek, northeast of a line beginning at a point on the southeastern shore $35^{\circ} 28' 14''$ N -- $76^{\circ} 30' 51''$ W; running 325° (M) to a point $35^{\circ} 28' 15''$ N -- $76^{\circ} 30' 56''$ W;
- (iii) Jones Creek, south of a line beginning at a point on the east shore $35^{\circ} 27' 56''$ N -- $76^{\circ} 30' 53''$ W; running 331° (M) to a point on the west shore $35^{\circ} 28' 00''$ N -- $76^{\circ} 30' 57''$ W;
- (iv) Becky Creek, north of a line beginning at a point on the east shore $35^{\circ} 28' 42''$ N -- $76^{\circ} 31' 37''$ W; running 277° (M) to a point on the west shore $35^{\circ} 28' 42''$ N -- $76^{\circ} 31' 40''$ W;
- (v) Neal Creek, north of a line beginning at a point on the east shore $35^{\circ} 28' 49''$ N -- $76^{\circ} 31' 49''$ W; running 275° (M) to a point on the west shore $35^{\circ} 28' 48''$ N -- $76^{\circ} 31' 54''$ W;
- (vi) Wood Creek, north of a line beginning at a point on the east shore $35^{\circ} 28' 38''$ N -- $76^{\circ} 32' 22''$ W; running 277° (M) to a point on the west shore $35^{\circ} 28' 38''$ N -- $76^{\circ} 32' 30''$ W;
- (vii) Spellman Creek, north of a line beginning at a point on the east shore $35^{\circ} 28' 44' 17''$ N -- $76^{\circ} 32' 42' 41''$ W; running 215° (M) to a point on the west shore $35^{\circ} 28' 43' 14''$ N -- $76^{\circ} 32' 44' 43''$ W;
- (viii) Speer Creek, east of a line beginning at a point on the north shore $35^{\circ} 27' 58''$ N -- $76^{\circ} 32' 24''$ W; running 207° (M) to a point on the south shore $35^{\circ} 27' 55''$ N -- $76^{\circ} 32' 24''$ W;
- (ix) Church Creek and Speer Gut, east of a line beginning at a point on the northeast shore $35^{\circ} 27' 35''$ N -- $76^{\circ} 32' 46''$ W; running 228° (M) to a point on the southwest shore $35^{\circ} 27' 33''$ N -- $76^{\circ} 32' 52''$ W;
- (x) Allison and Foeman Creek, south of a line beginning at a point on Parmalee Point $35^{\circ} 27' 15''$ N -- $76^{\circ} 33' 07''$ W; running 286° (M) to a point on the southwest shore $35^{\circ} 27' 18''$ N

- 76° 33' 12" W;
- (c) Flax Pond, west of a line beginning at a point on the south shore 35° 31' ~~52~~ 53" N - 76° 33' 15" W; running 009° (M) to a point on the north shore 35° 31' ~~56~~ 59" N - 76° 33' ~~45~~ 13" W;
- (d) Battalina and Tooleys Creeks, northwest of a line beginning at a point on the north shore 35° 32' ~~24~~ 22" N - 76° 36' ~~42~~ 08" W; running 226° (M) to a point on the south shore 35° 32' ~~02~~ 03" N - 76° 36' ~~24~~ 22" W;
- (4) In the Pamlico River Area:
- (a) North Creek:
- (i) North Creek, north of a line beginning at a point on the west shore 35° 25' 35" N -- 76° 40' 06" W; running 048° (M) to a point on the east shore 35° 25' 40" N -- 76° 40' 01" W;
- (ii) East Fork:
- (A) Northeast of a line beginning at a point on the northwest shore 35° 25' 48' ~~47~~" N -- 76° 39' ~~04~~ 18" W; running 144° (M) to a point on the southeast shore 35° 25' 43' ~~41~~" N -- 76° 39' ~~00~~ 10" W;
- (B) Unnamed tributary of East Fork northwest of a line beginning at a point on the north shore 35° 25' 41" N - 76° 39' 28" W; running 215° (M) to a point on the south shore 35° 25' 37" N - 76° 39' 30" W;
- (iii) Frying Pan Creek, east of a line beginning at a point on Chambers Point 35° 24' ~~54~~ 49" N -- 76° 39' 48' ~~44~~" W; running 051° (M) to a point on the north shore 35° ~~25~~ 24' ~~00~~ 57" N -- 76° 39' 33' ~~37~~" W;
- (iv) Little East Creek, west of a line beginning at a point on Cousin Point 35° 25' 00" N -- 76° 40' 26" W; running 028° (M) to a point on the north shore 35° 25' 08" N -- 76° 40' 22" W;
- (b) Goose Creek:
- (i) Creek north of Bostic Point, west of a line beginning at a point on the north shore 35° 19' 57" N -- 76° 37' 37" W; running 179° (M) to a point on the south shore 35° 19' 54" N -- 76° 37' 34" W;
- (ii) Upper Spring Creek:
- (A) Headwaters of Upper Spring Creek, east of a line beginning at a point on the north shore 35° 16' ~~20~~ 23" N - 76° ~~35~~ 36' ~~56~~ 03" W; running 139° (M) to a point on the south shore 35° 16' 44' ~~12~~" N - 76° ~~35~~ 36' 48' ~~01~~" W;
- (B) Unnamed tributary, north of a line beginning at a point on the west shore 35° 16' 50" N -- 76° 36' 27" W; running 099° (M) to a point on the east shore 35° 16' 50" N -- 76° 36' 24" W;
- (iii) Eastham Creek:
- (A) Slade Landing Creek, south of a line beginning at a point on the west shore 35° 17' 32" N -- 76° 35' 59" W; running 139° (M) to a point on the east shore 35° 17' 29" N -- 76° 35' 54" W;
- (B) Mallard Creek, north of a line beginning at a point on the west shore 35° 17' 49" N -- 76° 36' 09" W; running 122° (M) to a point on the east shore 35° 17' 47" N -- 76° 36' 04" W;
- (iv) Mud Gut, north and east of a line beginning at a point on the south shore 35° 17' 48" N -- 76° 36' 46" W; running 349° (M) to a point on the north shore 35° 17' 52" N -- 76° 36' 48" W;
- (v) Wilkerson Creek, east of a line beginning at a point on the south shore 35° 18' 20" N -- 76° 36' 44" W; running 025° (M) to a point on the north shore 35° 18' 23" N -- 76° 36' 45" W;
- (vi) Dixon Creek, east of a line beginning at a point on the north shore 35° 18' 53" N -- 76° 36' 37" W; running 205° (M) to a point on the south shore 35° 18' 37" N -- 76° 36' 42" W;
- (c) Oyster Creek; Middle Prong:
- (i) Oyster Creek:
- (A) West of a line beginning at a point on the north shore 35° 19' 29" N -- 76° 34' 02" W; running 166° (M) to a point on the south shore 35° 19' 25" N -- 76° 34' 00" W;
- (B) Duck Creek, south of a line beginning at a point on the west shore 35° 19' 06" N -- 76° 33' 18" W; running 055° (M) to a point on the east shore 35° 19' 10" N -- 76° 33' 12" W;
- (ii) James Creek, southwest of a line beginning at a point on the north shore 35° 18' 36" N -- 76° 32' 20" W; running 136° (M) to a point on the southeast shore 35° 18' 28" N -- 76° 32' 05" W;
- (iii) Middle Prong, south of a line beginning at a point on the west shore 35° 17' ~~50~~ 56" N -- 76° ~~32~~ 31' ~~06~~ 58" W; running 141° (M) to a point on the east shore 35° 17' 43' ~~44~~" N -- 76° 31' ~~57~~ 55" W;
- (iv) Clark Creek:
- (A) Headwaters of Clark Creek, southeast of a line beginning at a point on the southwest shore 35° 18' 06" N -- 76° 31' 12" W; running 056° (M) to a point on the northeast shore 35° 18' 12" N -- 76° 31' 06" W;
- (B) Boat Creek, east of a line beginning at a point of the south shore 35° 18' 24" N - 76° 31' 16" W; running 358° (M) to a

- point on the north shore 35° 18' 32" N - 76° 31' 18" W;
- (5) In the Western Pamlico Sound Area:
- (a) Mouse Harbor:
- (i) Long Creek, north of a line beginning at a point on the west shore 35° 18' 26" N -- 76° 29' 48" W; running 070° (M) to a point on the east shore 35° 18' 30" N -- 76° 29' 37" W;
- (ii) Small tributary east of Long Creek, northeast of a line beginning at a point on the west shore 35° 18' 31" N -- 76° 29' 13" W; running 137° (M) to a point on the east shore 35° 18' 28" N -- 76° 29' 10" W;
- (iii) Cedar Creek and adjacent tributary, south of a line beginning at a point on the west shore 35° 16' 54" N -- 76° 29' 53" W; running 136° (M) to a point on the east shore 35° 16' 39" N -- 76° 29' 31" W;
- (b) Big Porpoise Bay, west of a line beginning at a point on the north shore 35° 15' 44" N -- 76° 29' 29" W; running 154° (M) to a point on the south shore 35° 15' 38" N -- 76° 29' 22 19" W;
- (c) Middle Bay, west of a line beginning at a point on the south shore 35° 14' 22" N -- 76° 31' 14" W; running 055° (M) to a point on the north shore 35° 14' 36" N -- 76° 30' 50" W; Little Oyster Creek, north of a line beginning at a point on the west shore 35° 14' 28" N -- 76° 30' 14" W; running 074° (M) to a point on the east shore 35° 14' 35" N -- 76° 29' 59" W;
- (d) Jones Bay, west of the IWW:
- (i) Little Drum Creek/Little Eve Creek, two small tributaries on the south shore at the mouth of Jones Bay, south of a line beginning at a point on the west shore 35° 12' 26" N - 76° 31' 46" W; running 104° (M) to a point on the east shore 35° 12' 20" N - 76° 31' 16" W;
- (ii) Ditch Creek, south of a line beginning at a point on the west shore 35° 13' 21" N -- 76° 33' 40" W; running 115° (M) to a point on the east shore 35° 13' 14" N -- 76° 33' 14" W;
- (iii) Lambert Creek, west of a line beginning at a point on the south shore 35° 13' 49 48" N - 76° 34' 20 18" W; running 016° (M) to a point on the north shore 35° 13' 50 53" N - 76° 34' 49 20" W;
- (iv) Headwaters of Jones Bay, (west of the IWW), west of a line beginning at a point on the south shore 35° 14' 25 23" N -- 76° 35' 26 27" W; running 009° (M) to a point on the north shore at 35° 14' 28 29" N -- 76° 35' 26" W;
- (v) Bills Creek, north of a line beginning at a point on the west shore 35° 14' 29" N - 76° 34' 47" W; running 150° (M) to a point on the east shore 35° 14' 26" N - 76° 34' 43" W;
- (vi) Doll Creek, north of a line beginning at a point on the west shore 35° 14' 20" N -- 76° 34' 14" W; running 129° (M) to a point on the east shore 35° 14' 15" N -- 76° 34' 04" W;
- (vii) Drum Creek, north of a line beginning at a point on the west shore 35° 14' 10" N -- 76° 33' 17" W; running 116° (M) to a point on the east shore 35° 14' 08" N -- 76° 33' 05" W.
- (6) In the Bay River Area:
- (a) Mason Creek, southeast of a line beginning at a point on the southwest shore 35° 08' 40 08" N -- 76° 41' 39 42" W; running 041° (M) to a point on the east shore 35° 08' 45 16" N -- 76° 41' 34 32" W;
- (b) Moore Creek, southeast of a line beginning at a point on the southwest shore 35° 08' 52" N -- 76° 40' 18" W; running 032° (M) to a point on the north shore 35° 08' 58 57" N -- 76° 40' 45 13" W;
- (c) ~~Small tributaries from Bell Point to Ball Creek; Creek, southwest of a line beginning at a point on the northwest shore 35° 09' 57" N -- 76° 39' 26" W; running 128° (M) to a point on the southeast shore 35° 09' 45" N -- 76° 38' 54" W;~~
- (i) Tributary west of Bell Point south of a line beginning at a point on the west shore 35° 09' 57" N - 76° 39' 25" W; running 082° (M) to a point on the east shore 35° 10' 00" N -- 76° 39' 21" W;
- (ii) Little Pasture Creek, south of a line beginning at a point on the west shore 35° 09' 52" N - 76° 39' 10" W; running 139° (M) to a point on the east shore 35° 09' 49" N -- 76° 39' 06" W;
- (iii) Rice Creek, south of a line beginning at a point on the west shore 35° 09' 46" N - 76° 38' 59" W; running 122° (M) to a point on the east shore 35° 09' 43" N -- 76° 38' 53" W;
- (d) Ball Creek-Cabin Creek, south of a line beginning at a point on the west shore 35° 09' 39" N -- 76° 38' 01" W; running 116° (M) to a point on the east shore 35° 09' 34 32" N -- 76° 37' 38 37" W;
- (e) Bonner Bay:
- (i) Riggs Creek, west of a line beginning at a point on the north shore 35° 09' 24" N -- 76° 36' 15" W; running 156° (M) to a point on the south shore 35° 09' 13" N -- 76° 36' 07" W;
- (ii) Spring Creek, west of a line beginning at a point on the north shore 35° 08' 29" N -- 76° 36' 43 12" W; running 165° (M) to a point on

- the south shore 35° 08' 20 19" N -- 76° 36' 07 06" W;
- (iii) Bryan Creek, south of a line beginning at a point on the west shore 35° 08' 22" N -- 76° 35' 53" W; running 069° (M) to a point on the east shore 35° 08' 25" N -- 76° 35' 43" W;
- (iv) Dipping Vat Creek, east of a line beginning at a point on the north shore 35° 09' 17" N -- 76° 34' 21" W; running 164° (M) to a point on the south shore 35° 09' 09" N -- 76° 34' 18" W;
- (v) Long Creek, south of a line beginning at a point on the west shore 35° 08' 12" N -- 76° 34' 38" W; running 098° (M) to a point on the east shore 35° 08' 12" N -- 76° 34' 30" W;
- (vi) Small tributary off Long Creek, west of a line beginning at a point on the north shore 35° 08' 30" N -- 76° 34' 42" W; running 164° (M) to a point on the south shore 35° 08' 24" N -- 76° 34' 38" W;
- (f) Rock Hole Bay, northeast of a line beginning at a point on the west shore 35° 11' 39" N -- 76° 32' 36" W; running 150° (M) to a point on the east shore 35° 11' 46 14" N -- 76° 32' 45 13" W;
- (g) Dump Creek, north of a line beginning at a point on the west shore 35° 11' 42" N -- 76° 33' 27" W; running 057° (M) to a point on the east shore 35° 11' 48" N -- 76° 33' 20" W;
- (h) Tributaries east of IWW at Gales Creek: ~~Creek, east of a line beginning at a point on the north shore of the northern tributary 35° 12' 54" N -- 76° 35' 29" W; running 158° (M) to a point on the south shore of the southern tributary 35° 12' 22" N -- 76° 35' 06" W;~~
- (i) Raccoon Creek, east of a line beginning at a point on the north shore 35° 12' 54" N -- 76° 35' 31" W; running 158° (M) to a point on the south shore 35° 12' 39" N -- 76° 35' 20" W;
- (ii) Ditch Creek, east of a line beginning at a point on the north shore 35° 12' 26" N -- 76° 35' 06" W; running 164° (M) to a point on the south shore 35° 12' 20" N -- 76° 35' 04" W;
- (iii) Jumpover Creek, west of a line beginning at a point on the north shore 35° 13' 17" N -- 76° 35' 35" W; running 198° (M) to a point on the south shore 35° 13' 07" N -- 76° 35' 38" W;
- (i) ~~Gales Creek and adjacent tributary; west of a line beginning at a point on the north shore of Gales Creek 35° 12' 55" N -- 76° 35' 46" W; running 160° (M) to a point on the south shore of adjacent creek 35° 12' 27" N -- 76° 35' 25" W;~~
- (i) Gales Creek, west of a line beginning at a point on the north shore 35° 12' 54" N -- 76° 35' 44" W; running 190° (M) to a point on the south shore 35° 12' 47" N -- 76° 35' 42" W;
- (ii) Whealton and Tar Creeks, west of a line beginning at a point on the north shore 35° 12' 42" N -- 76° 35' 36" W; running 171° (M) to a point on the south shore 35° 12' 25" N -- 76° 35' 25" W;
- (j) Chadwick Creek and No Jacket Creek, north of a line beginning at a point on the west shore 35° 11' 58 56" N -- 76° 35' 56 53" W; running 079° (M) to a point on the east shore 35° 12' 04 03" N -- 76° 35' 33 29" W;
- (k) Bear Creek, north of a line beginning at a point on the west shore 35° 11' 35" N -- 76° 36' 22" W; running 037° (M) to a point on the east shore 35° 11' 44" N -- 76° 36' 15" W;
- (l) Little Bear Creek, north of a line beginning at a point on the west shore 35° 11' 06" N -- 76° 36' 20" W; running 045° (M) to a point on the east shore 35° 11' 16" N -- 76° 36' 07" W;
- (m) All small tributaries to Bay River from Petty Point to Sanders ~~Point; Point, closed at mouth;~~
- (i) Oyster Creek, north of a line beginning at a point on the west shore 35° 10' 48" N -- 76° 36' 43" W; running 061° (M) to a point on the east shore 35° 10' 56" N -- 76° 36' 31" W;
- (ii) Potter Creek, north of a line beginning at a point on the west shore 35° 10' 43" N -- 76° 37' 06" W; running 063° (M) to a point on the east shore 35° 10' 48" N -- 76° 37' 00" W;
- (iii) Barnes and Gascon Creeks, north of a line beginning at a point on the west shore 35° 10' 36" N -- 76° 37' 19" W; running 066° (M) to a point on the east shore 35° 10' 42" N -- 76° 37' 13" W;
- (iv) Harris Creek, north of a line beginning at a point on the west shore 35° 10' 33" N -- 76° 37' 34" W; running 064° (M) to a point on the east shore 35° 10' 35" N -- 76° 37' 29" W;
- (v) Mesic Creek, north of a line beginning at a point on the west shore 35° 10' 29" N -- 76° 37' 58" W; running 076° (M) to a point on the east shore 35° 10' 30" N -- 76° 37' 54" W;
- (n) In Vandemere Creek:
- (i) Cedar Creek, north of a line beginning at a point on the west shore 35° 11' 43 12" N -- 76° 39' 36" W; running 078° (M) to a point on the east shore 35° 11' 44 13" N -- 76° 39' 33 32" W;
- (ii) Long Creek, east of a line beginning at a point

- on the north shore $35^{\circ} 11' 27" 29" N - 76^{\circ} 38' 49' 48" W$; running 177° (M) to a point on the south shore $35^{\circ} 11' 23' 24" N - 76^{\circ} 38' 48" W$;
- (iii) Little Vandemere Creek, north of a line beginning at a point on the west shore $35^{\circ} 12' 07' 09" N - 76^{\circ} 39' 47' 25" W$; running 120° (M) to a point on the east shore $35^{\circ} 12' 06" W - 76^{\circ} 39' 44' 12" W$;
- (o) Smith Creek, north of a line beginning at a point on the west shore $35^{\circ} 10' 23" N - 76^{\circ} 40' 15" W$; running 054° (M) to a point on the east shore $35^{\circ} 10' 27" N - 76^{\circ} 40' 13" W$;
- (p) Harper Creek, west of a line beginning at a point on the south shore $35^{\circ} 09' 09" N - 76^{\circ} 41' 54" W$; running 024° (M) to a point on the north shore $35^{\circ} 09' 15" N - 76^{\circ} 41' 51" W$;
- (q) Chapel Creek, north of a line beginning at a point on the west shore $35^{\circ} 08' 56" N - 76^{\circ} 42' 52" W$; running 076° (M) to a point on the east shore $35^{\circ} 08' 58" N - 76^{\circ} 42' 48" W$;
- (r) Swindell Bay, south of a line beginning at a point on the west shore $35^{\circ} 08' 46' 14" N - 76^{\circ} 42' 57' 58" W$; running 135° (M) to a point on the east shore $35^{\circ} 08' 43' 11" N - 76^{\circ} 42' 50' 48" W$.
- (7) In the Neuse River Area North Shore:
- (a) Swan Creek, west of a line beginning at a point on the north shore $35^{\circ} 06' 46" N - 76^{\circ} 33' 41" W$; running 042° (M) to a point on the south shore $35^{\circ} 06' 18" N - 76^{\circ} 34' 02" W$;
- (b) Broad Creek:
- (i) Greens Creek, east of a line beginning at a point on the north shore $35^{\circ} 06' 05" N - 76^{\circ} 35' 28" W$; running 154° (M) to a point on the south shore $35^{\circ} 06' 00" N - 76^{\circ} 35' 24" W$;
- (ii) Pittman Creek, north of a line beginning at a point on the west shore $35^{\circ} 05' 48" N - 76^{\circ} 36' 10" W$; running 068° (M) to a point on the east shore $35^{\circ} 05' 54" N - 76^{\circ} 36' 02" W$;
- (iii) Burton Creek, west of a line beginning at a point on the south shore $35^{\circ} 05' 37" N - 76^{\circ} 36' 32" W$; running 034° (M) to a point on the north shore $35^{\circ} 05' 43" N - 76^{\circ} 36' 30" W$;
- (iv) All small tributaries on the north shore of Broad Creek, north of a line beginning at a point on the west shore of the western most tributary $35^{\circ} 05' 38" N - 76^{\circ} 37' 49" W$; running 109° (M) to a point on the east shore of the eastern most tributary $35^{\circ} 05' 27" N - 76^{\circ} 36' 47" W$;
- (v) Brown Creek, northwest of a line beginning at a point on the southwest shore $35^{\circ} 05' 30" N - 76^{\circ} 37' 51" W$; running 032° (M) to a point on the northeast shore $35^{\circ} 05' 37" N - 76^{\circ} 37' 48" W$;
- (vi) Broad Creek including Gideon Creek, west of a line beginning at a point on the south shore $35^{\circ} 05' 18" N - 76^{\circ} 37' 49" W$; running 013° (M) to a point on the north shore $35^{\circ} 05' 30" N - 76^{\circ} 37' 51" W$;
- (vii) Tar Creek, south of a line beginning at a point on the west shore $35^{\circ} 05' 45' 18" N - 76^{\circ} 37' 36' 38" W$; running 097° (M) to a point on the east shore $35^{\circ} 05' 45' 18" N - 76^{\circ} 37' 30' 28" W$;
- (viii) ~~Small tributaries east of Tar Creek, south of a line beginning at a point on the west shore of the western tributary $35^{\circ} 05' 18" N - 76^{\circ} 37' 03" W$; running 106° (M) to a point on the east shore of the eastern tributary $35^{\circ} 05' 14" N - 76^{\circ} 36' 27" W$; Tributary east of Tar Creek, south of a line beginning at a point on the west shore $35^{\circ} 05' 18" N - 76^{\circ} 37' 03" W$; running 108° (M) to a point on the east shore $35^{\circ} 05' 17" N - 76^{\circ} 36' 49" W$;~~
- (ix) Tributary east of Tar Creek, south of a line beginning at a point on the west shore $35^{\circ} 05' 15" N - 76^{\circ} 36' 46" W$; running 114° (M) to a point on the east shore $35^{\circ} 05' 15" N - 76^{\circ} 36' 39" W$;
- (x) Parris Creek, south of a line beginning at a point on the west shore $35^{\circ} 05' 15" N - 76^{\circ} 36' 34" W$; running 123° (M) to a point on the east shore $35^{\circ} 05' 12" N - 76^{\circ} 36' 27" W$;
- (xi) ~~(+)~~ Mill Creek and Cedar Creek, south of a line beginning at a point on the west shore of Mill Creek $35^{\circ} 05' 26" N - 76^{\circ} 36' 02" W$; running 109° (M) to a point on the east shore of the eastern tributary $35^{\circ} 05' 22" N - 76^{\circ} 35' 36" W$;
- (c) Orchard Creek north of a line beginning at a point on the west shore $35^{\circ} 03' 21" N - 76^{\circ} 38' 26" W$; running 061° (M) to a point on the east shore $35^{\circ} 03' 37" N - 76^{\circ} 37' 58" W$;
- (d) Pierce Creek, north of a line beginning at a point on the west shore $35^{\circ} 02' 29" N - 76^{\circ} 40' 07" W$; running 083° (M) to a point on the east shore $35^{\circ} 02' 31" N - 76^{\circ} 40' 01" W$;
- (e) Whittaker Creek, north of a line beginning at a point on the west shore $35^{\circ} 01' 37" N - 76^{\circ} 41' 12" W$; running 095° (M) to a point on the east shore $35^{\circ} 01' 37" N - 76^{\circ} 40' 58" W$;
- (f) Oriental:
- (i) Smith and Morris Creek, north of a line beginning at a point on the west shore $35^{\circ} 02' 15" N - 76^{\circ} 42' 19" W$; running 096° (M) to a point on the east shore $35^{\circ} 02' 16" N - 76^{\circ} 42' 12" W$;
- (ii) Tributary off Smith Creek west, west of a line

- beginning at a point on the north shore 35° 02' 10" N -- 76° 42' 19" W; running 186° (M) to a point on the south shore 35° 02' 08" N -- 76° 42' 19" W;
- (iii) Tributary off Smith Creek, east, east of a line beginning at a point on the south shore 35° 02' 06" N -- 76° 42' 12" W; running 026° (M) to a point on the north shore 35° 02' 08" N -- 76° 42' 11" W;
- (iv) Creek west of Dewey Point, north of a line beginning at a point on the west shore 35° 01' 34" N -- 76° 42' 35" W; running 049° (M) to a point on the west shore 35° 01' 36" N -- 76° 42' 32" W;
- (v) ~~Two tributaries on the south shore of Greens Creek, south of a line beginning at a point on the west shore of the western creek 35° 01' 24" N -- 76° 42' 49" W; running 110° (M) to a point on the east shore of the eastern creek 35° 01' 19" N -- 76° 42' 27" W; Tributary on the south shore of Greens Creek, south of a line beginning at a point on the west shore 35° 01' 25" N -- 76° 42' 49" W; running 115° (M) to a point on the east shore 35° 01' 24" N -- 76° 42' 43" W;~~
Tributary on the south shore of Greens Creek south of a line beginning at a point on the west shore 35° 01' 23" N -- 76° 42' 31" W; running 113° (M) to a point on the east shore 35° 01' 20" N -- 76° 42' 27" W;
- (vi) Greens Creek, west of a line beginning at a point on the north shore 35° 01' 34" N -- 76° 43' 02" W; running 154° (M) to a point on the south shore 35° 01' 28" N -- 76° 42' 57" W;
- (vii) Kershaw Creek, north of a line beginning at a point on the west shore 35° 01' 34" N -- 76° 43' 02" W; running 070° (M) to a point on the east shore 35° 01' 38" N -- 76° 42' 53" W;
- (viii) Windmill Point, southwest of a line beginning at a point on the northwest shore 35° 01' 11" N -- 76° 42' 18" W; running 130° (M) to a point on the southeast shore 35° 01' 09" N -- 76° 42' 14" W.
- (g) Dawson Creek:
- (i) Unnamed eastern tributary of Dawson Creek, east of a line beginning at a point on the north shore 35° 00' 12" N - 76° 45' 19" W; running 155° (M) to a point on the south shore 35° 00' 07" N - 76° 45' 15" W;
- (ii) Unnamed tributary of Dawson Creek (at mouth), south of a line beginning at a point on the east shore 34° 59' 39" N - 76° 45' 09" W; running 256° (M) to a point on the south shore 34° 59' 38" N - 76° 45' 14" W;
- (h) Beard Creek tributary, southeast of a line beginning at a point on the north shore 35° 00' 47' 18" N - 76° 51' 55' 54" W; running 214° (M) to a point on the southwest shore 35° 00' 42' 10" N - 76° 54' 52' 58' 00" W.
- (8) In the Neuse River Area South Shore:
- (a) Clubfoot Creek, south of a line beginning at a point on the west shore 34° 52' 15" N -- 76° 45' 48" W; running 095° (M) to a point on the east shore 34° 52' 15" N -- 76° 45' 36" W;
- (i) Mitchell Creek, west of a line beginning at a point on the south shore 34° 54' 15" N -- 76° 45' 51" W; running 021° (M) to a point on the north shore 34° 54' 25" N -- 76° 45' 48" W;
- (ii) Gulden Creek, east of a line beginning at a point on the south shore 34° 54' 04" N -- 76° 45' 31" W; running 032° (M) to a point on the north shore 34° 54' 12" N -- 76° 45' 29" W;
- (b) Adams Creek:
- (i) Godfrey Creek, southwest of a line beginning at a point on the northwest shore 34° 57' 18" N -- 76° 41' 08" W; running 151° (M) to a point on the south shore 34° 57' 16" N -- 76° 41' 05" W;
- (ii) Delamar Creek, southwest of a line beginning at a point on the northwest shore 34° 57' 02" N -- 76° 40' 45" W; running 138° (M) to a point on the south shore 34° 57' 00" N -- 76° 40' 43" W;
- (iii) Kellum Creek, west of a line beginning at a point on the north shore 34° 55' 28" N -- 76° 39' 50' 52" W; running 160° (M) to a point on the south shore 34° 55' 25" N -- 76° 39' 50" W;
- (iv) Kearney Creek and unnamed tributary north, west of a line beginning at a point on the north shore of the north creek 34° 55' 09" N -- 76° 40' 00" W; running 194° (M) to a point on the south shore of Kearney Creek 34° 54' 58" N -- 76° 40' 01" W;
- (v) Isaac Creek, southeast of a line beginning at a point on the west shore 34° 54' 16" N -- 76° 40' 07" W; running 102° (M) to a point on the east shore 34° 54' 15" N -- 76° 40' 02" W;
- (vi) Back Creek, south of a line beginning at a point on the west shore 34° 54' 33" N -- 76° 39' 43" W; running 059° (M) to a point on the east shore 34° 54' 38" N -- 76° 39' 33" W;
- (vii) Cedar Creek, south of a line beginning at a point on the west shore 34° 55' 45" N -- 76° 38' 38" W; running 095° (M) to a point on the east shore 34° 55' 45" N -- 76° 38' 32" W;
- (viii) Jonaquin Creek, north of a line beginning at a

- point on the west shore 34° 56' 06" N -- 76° 38' 32" W; running 095° (M) to a point on the east shore 34° 56' 06" N -- 76° 38' 30" W;
- (ix) Dumpling Creek, east of a line beginning at a point on the north shore 34° 56' 54" N -- 76° 39' 33" W; running 142° (M) to a point on the south shore 34° 56' 52" N -- 76° 39' 31" W;
- (x) Sandy Huss Creek, north of a line beginning at a point on the west shore 34° 57' 14" N -- 76° 39' 50" W; running 116° (M) to a point on the east shore 34° 57' 10" N -- 76° 39' 43" W;
- (c) Garbacon Creek, south of a line beginning at a point on the west shore 34° 59' 00" N -- 76° 38' 34" W; running 097° (M) to a point on the east shore 34° 59' 00" N -- 76° 38' 30" W;
- (d) South River:
- (i) Big Creek, southwest of a line beginning at a point on the northwest shore 34° 56' 55" N - 76° 35' 22" W; running 160° (M) to a point on the southeast shore 35° 56' 49" N - 76° 35' 16" W;
- (ii) Horton Bay, north of a line beginning at a point on the west shore 34° 59' 08" N - 76° 34' 44" W; running 088° (M) to a point on the west shore 34° 59' 11" N - 76° 34' 30" W;
- (e) Brown Creek, south of a line beginning at a point on the west shore 34° 59' 51" N -- 76° 33' 34" W; running 097° (M) to a point on the east shore 34° 59' 51" N -- 76° 33' 30" W;
- (f) Turnagain Bay:
- (i) Abraham Bay, west of a line beginning at a point on the north shore 35° 00' 09" N -- 76° 30' 48" W; running 187° (M) to a point on the south shore 34° 59' 50" N -- 76° 30' 44" W;
- (ii) Broad Creek and adjacent tributary, west of a line from a point on the north shore 34° 59' 11" N -- 76° 30' 26" W; running 151° (M) to a point on the south shore 34° 58' 57" N -- 76° 30' 08" W;
- (iii) Mulberry Point Creek, Tump Creek and adjacent tributary, east of a line beginning at a point on the north shore 35° 00' 28" N -- 76° 29' 47" W; running 166° (M) to a point on the south shore 34° 59' 40" N -- 76° 29' 23" W;
- (iv) Deep Gut, east of a line beginning at a point on the north shore 34° 59' 35" N -- 76° 29' 03" W; running 156° (M) to a point on the south shore 34° 59' 28" N -- 76° 28' 58" W;
- (v) Big Gut, southeast of a line beginning at a point on the north shore 34° 59' 04" N - 76° 28' 44" W; running 219° (M) to a point on the south shore 34° 58' 55" N - 76° 28' 44" W.
- (9) West Bay; Long Bay Area:
- (a) Fur Creek and Henrys Creek, west of a line beginning at a point on the north shore 34° 56' 33" N -- 76° 27' 42" W; running 156° (M) to a point on the south shore 34° 56' 23" N -- 76° 27' 28" W;
- (b) Cadduggen Creek, west of a line beginning at a point on the north shore 34° 56' 26" N -- 76° 23' 59" W; running 143° (M) to a point on the south shore 34° 56' 17" N -- 76° 23' 41" W.
- (10) Core Sound Area:
- (a) Cedar Island Bay, northwest of a line beginning at a point on the southwest shore 34° 59' 58" N -- 76° 17' 58" W; running 038° (M) through Beacon No. 6 to a point on the northeast shore 34° 59' 45" N -- 76° 17' 25" W;
- (b) Lewis Creek, north of a line beginning at a point on the west shore 34° 56' 56" N -- 76° 16' 54" W; running 097° (M) to a point on the east shore 34° 56' 56" N -- 76° 16' 51" W;
- (c) Thorofare Bay:
- (i) Tributary off upper Thorofare Bay, southwest of a line beginning at a point on the northwest shore 34° 55' 27" N -- 76° 21' 28" W; running 132° (M) to a point on the southeast shore 34° 55' 22" N -- 76° 21' 16" W;
- (ii) Barry's Bay, west of a line beginning at a point on the north shore 34° 54' 30" N -- 76° 20' 48" W; running 155° (M) to a point on the south shore 34° 54' 24" N -- 76° 20' 35" W;
- (d) Nelson Bay:
- (i) Willis Creek and Fulchers Creek, west of a line beginning at a point on the north shore of Willis Creek 34° 51' 06" N -- 76° 24' 36" W; running 194° (M) to a point on the south shore of Fulchers Creek 34° 50' 44" N -- 76° 24' 54" W;
- (ii) Lewis Creek, west of a line beginning at a point on the south shore 34° 51' 44" N -- 76° 24' 40" W; running 011° (M) to a point on the north shore 34° 51' 54" N -- 76° 24' 39" W;
- (e) Cedar Creek between Sea Level and Atlantic, west of a line beginning at a point on the south shore 34° 52' 00" N -- 76° 22' 44" W; running 007° (M) to a point on the north shore 34° 52' 03" N -- 76° 22' 44" W;
- (f) Oyster Creek, northwest of the Highway 70 bridge;
- (g) Jarretts Bay Area:
- (i) Smyrna Creek, northwest of the Highway 70 bridge;
- (ii) Ditch Cove and adjacent tributary, east of a line beginning at a point on the north shore

- 34° 48' 00" N - 76° 28' 26" W; running 017° (M) to a point on the south shore 34° 47' 35" N - 76° 28' 30" W;
- (iii) Broad Creek, north of a line beginning at a point on the west shore 34° 47' 53" N - 76° 29' 18" W; running 081° (M) to a point on the east shore 34° 47' 58" N - 76° 28' 59" W;
 - (iv) Howland Creek, northwest of a line beginning at a point on the southwest shore 34° 47' 21" N - 76° 29' 53" W; running 050° (M) to a point on the northeast shore 34° 47' 26" N - 76° 29' 47" W;
 - (v) Great Creek, southeast of a line beginning at a point on the southwest shore 34° 47' 08" N - 76° 29' 12" W; running 053° (M) to a point on the northeast shore 34° 47' 17" N - 76° 29' 02" W;
 - (vi) Williston Creek, northwest of the Highway 70 bridge;
 - (vii) Wade Creek, northwest of a line beginning at a point on the south shore 34° 46' 10" N -- 76° 30' 22" W; running 042° (M) to a point on the north shore 34° 46' 17" N -- 76° 30' 17" W;
 - (viii) Jump Run, north of a line beginning at a point on the west shore 34° 45' 31" N -- 76° 30' 26" W; running 097° (M) to a point on the west shore 34° 45' 31" N -- 76° 30' 21" W;
 - (ix) Middens Creek, west of a line beginning at a point on the south shore 34° 45' 23" N -- 76° 30' 59" W; running 007° (M) to a point on the north shore 34° 45' 29" N -- 76° 30' 59" W;
 - (x) Tusk Creek, northwest of a line beginning at a point on the southwest shore 34° 44' 37" N -- 76° 30' 47" W; running 033° (M) to a point on the north shore 34° 44' 48" N -- 76° 30' 38" W;
 - (xi) Creek west of Bells Island, west of a line beginning at a point on the north shore 34° 43' 56" N -- 76° 30' 26" W; running 161° (M) to a point on the south shore 34° 43' 46" N -- 76° 30' 23" W.
- (11) Straits, North River, Newport River Area:
- (a) Straits:
 - (i) Sleepy Creek, north of a line beginning at a point on the west shore 34° 43' 21" N -- 76° 31' 32" W; running 096° (M) to a point on the east shore 34° 43' 21" N -- 76° 31' 20" W;
 - (ii) Whitehurst Creek, north of a line from a point on the west shore 34° 43' 28" N -- 76° 33' 22" W; running 072° (M) to a point on the east shore 34° 43' 33" N -- 76° 33' 13" W;
 - (b) North River, north of Highway 70 bridge:
 - (i) Ward Creek, north of Highway 70 bridge:
- (A) North Leopard Creek, southeast of a line beginning at a point on the southwest shore 34° 45' 57" N -- 76° 34' 27" W; running 055° (M) to a point on the north-east shore 34° 46' 01" N -- 76° 34' 19" W;
 - (B) South Leopard Creek, southeast of a line beginning at a point on the southwest shore 34° 45' 29" N -- 76° 34' 47" W; running 057° (M) to a point on the north-east shore 34° 45' 33" N -- 76° 34' 40" W;
 - (ii) Turner Creek (Gibbs Creek), west of a line beginning at a point on the south shore 34° 43' 23" N -- 76° 37' 43" W; running 012° (M) to a point on the north shore 34° 43' 30" N -- 76° 37' 40" W;
 - (c) Newport River, west of a line beginning at a point at Lawton Point 34° 45' 41" N - 76° 44' 03" W; running 356° (M) to a point on the north shore 34° 46' 34" N - 76° 44' 18" W;
 - (i) Russel Creek, north of a line beginning at a point on the west shore 34° 45' 36" N -- 76° 39' 47" W; running 097° (M) to a point on the east shore 34° 45' 35" N -- 76° 39' 46" W;
 - (ii) Ware Creek, northeast of a line beginning at a point on the northwest shore 34° 46' 28" N -- 76° 40' 30" W; running 153° (M) to a point on the southeast shore 34° 46' 23" N -- 76° 40' 27" W;
 - (iii) Bell Creek, northeast of a line beginning at a point on the northwest shore 34° 47' 19" N -- 76° 40' 58" W; running 166° (M) to a point on the southeast shore 34° 47' 02" N -- 76° 40' 56" W;
 - (iv) Eastman Creek, east of a line beginning at a point on the north shore 34° 47' 57" N -- 76° 41' 04" W; running 184° (M) to a point on the south shore 34° 47' 47" N -- 76° 41' 04" W;
 - (v) Oyster Creek, north of a line beginning at a point on the west shore 34° 46' 32" N -- 76° 42' 32" W; running 080° (M) to a point on the east shore 34° 46' 37" N -- 76° 42' 14" W;
 - (vi) Harlow Creek, north of a line beginning at a point on the west shore 34° 46' 41' 40" N -- 76° 43' 28' 29" W; running 060° (M) to a point on the northeast shore 34° 46' 50' 49" N -- 76° 43' 15' 19" W;
 - (vii) Calico Creek, west of a line beginning at a point on the north shore 34° 43' 42" N -- 76° 43' 11" W; running 208° (M) to a point on the south shore 34° 43' 37" N -- 76° 43' 13" W;
 - (viii) Crab Point Bay, northwest of a line beginning

- at a point on the southwest shore $34^{\circ} 44' 43''$ $03' 54''$ N -- $76^{\circ} 43' 09' 07''$ W; running $047^{\circ} 052'$ (M) to a point on the northeast shore $34^{\circ} 44' 08' 01''$ N -- $76^{\circ} 43' 05' 00''$ W.
- (12) Bogue Sound; Bogue Inlet Area:
- (a) Gales Creek, above the Highway 24 bridge;
 - (b) Broad Creek, above the Highway 24 bridge;
 - (c) Goose Creek, north of a line beginning at a point on the west shore $34^{\circ} 41' 46''$ N -- $77^{\circ} 00' 45''$ W; running 070° (M) to a point on the east shore $34^{\circ} 41' 51''$ N -- $77^{\circ} 00' 32''$ W;
 - (d) Archer Creek, west of a line beginning at a point on the north shore $34^{\circ} 40' 27''$ N -- $77^{\circ} 00' 47''$ W; running 186° (M) to a point on the south shore $34^{\circ} 40' 22''$ N -- $77^{\circ} 00' 47''$ W;
 - (e) White Oak River, north of a line beginning at a point on the west shore $34^{\circ} 45' 27''$ N -- $77^{\circ} 07' 39''$ W; running 095° (M) to a point on the east shore $34^{\circ} 45' 27''$ N -- $77^{\circ} 07' 07''$ W;
 - (i) Pettiford Creek, east of a line beginning at a point on the north shore $34^{\circ} 42' 51''$ N -- $77^{\circ} 05' 24''$ W; running 175° (M) to a point on the south shore $34^{\circ} 42' 37''$ N -- $77^{\circ} 05' 20''$ W.
 - (ii) Holland Mill Creek, west of a line beginning at a point on the north shore $34^{\circ} 43' 49''$ N -- $77^{\circ} 11' 08' 58' 02''$ W; running 184° (M) to a point on the south shore $34^{\circ} 43' 38''$ N -- $77^{\circ} 11' 08' 58' 02''$ W.
 - (f) Hawkins Creek, north of a line beginning at a point on the west shore $34^{\circ} 41' 06''$ N -- $77^{\circ} 07' 44''$ W; running 085° (M) to a point on the east shore $34^{\circ} 41' 07''$ N -- $77^{\circ} 07' 35''$ W;
 - (g) Queen's Creek, north of country road number 1509 bridge:
 - (i) Dick's Creek, west of a line beginning at a point on the south shore $34^{\circ} 39' 55''$ N -- $77^{\circ} 09' 21''$ W; running 338° (M) to a point on the north shore $34^{\circ} 39' 58''$ N -- $77^{\circ} 09' 21''$ W;
 - (ii) Parrot Swamp, west of a line beginning at a point on the south shore $34^{\circ} 40' 22''$ N -- $77^{\circ} 09' 39''$ W; running 333° (M) to a point on the north shore $34^{\circ} 40' 36''$ N -- $77^{\circ} 09' 48''$ W;
 - (iii) Hall's Creek, east of a line beginning at a point on the south shore $34^{\circ} 41' 00''$ N -- $77^{\circ} 09' 42''$ W; running 337° (M) to a point on the north shore $34^{\circ} 41' 06''$ N -- $77^{\circ} 09' 44''$ W;
 - (h) Bear Creek, west of Willis Landing.
- (13) New River Area:
- (a) Salliers Bay area, all waters north and northwest of the IWW beginning at a point on Cedar Point $34^{\circ} 32' 48''$ N -- $77^{\circ} 19' 14''$ W to Beacon No. 58 $34^{\circ} 37' 56''$ N -- $77^{\circ} 12' 20''$ W including Howard Bay, Mile Hammock Bay, Salliers Bay, and Freeman Creek;
 - (b) New River Inlet area (including Hellgate Creek and Ward's Channel), all waters south of the IWW from Beacon No. 65 $34^{\circ} 32' 41''$ N -- $77^{\circ} 18' 57''$ W to Beacon No. 15 $34^{\circ} 31' 03''$ N -- $77^{\circ} 22' 18''$ W, excluding the marked New River Inlet Channel;
 - (c) New River:
 - (i) Trap's Bay, northeast of a line beginning at a point on the east shore $34^{\circ} 33' 47''$ N -- $77^{\circ} 20' 25''$ W; running 317° (M) to a point on the west shore $34^{\circ} 34' 07''$ N -- $77^{\circ} 20' 59''$ W;
 - (ii) Courthouse Bay:
 - (A) Tributary of Courthouse Bay, southeast of a line beginning at a point on Harvey's Point $34^{\circ} 34' 59''$ N -- $77^{\circ} 22' 25''$ W; running 066° (M) to a point on the east shore $34^{\circ} 35' 05''$ N -- $77^{\circ} 22' 11''$ W;
 - (B) Tributary of Courthouse Bay, northwest of a line beginning at a point on the west shore $34^{\circ} 35' 02''$ N -- $77^{\circ} 22' 40''$ W; running 057° (M) to a point on the east shore $34^{\circ} 35' 10''$ N -- $77^{\circ} 22' 31''$ W;
 - (C) Rufus Creek, east of a line beginning at a point on Wilken's Bluff $34^{\circ} 34' 19''$ N -- $77^{\circ} 21' 41''$ W; running 002° (M) to a point on the north shore $34^{\circ} 34' 27''$ N -- $77^{\circ} 21' 41''$ W;
 - (iii) Wheeler Creek, south of a line beginning at a point on Poverty Point $34^{\circ} 34' 04''$ N -- $77^{\circ} 23' 15''$ W; running 267° (M) to a point on the west shore $34^{\circ} 34' 03''$ N -- $77^{\circ} 23' 26''$ W;
 - (iv) Fannie Creek, west of a line beginning at a point on the south shore $34^{\circ} 34' 07''$ N -- $77^{\circ} 23' 35''$ W; running 333° (M) to a point on the north shore $34^{\circ} 34' 08''$ N -- $77^{\circ} 23' 40''$ W;
 - (v) Snead's Creek, northwest of a line beginning at a point on the east shore $34^{\circ} 35' 19''$ N -- $77^{\circ} 23' 31''$ W; running 219° (M) to a point on the west shore $34^{\circ} 35' 17''$ N -- $77^{\circ} 23' 34''$ W;
 - (vi) Everette Creek, south of a line beginning at a point on the east shore $34^{\circ} 34' 13''$ N -- $77^{\circ} 24' 44''$ W; running 273° (M) to a point on the west shore $34^{\circ} 34' 12''$ N -- $77^{\circ} 24' 49''$ W;
 - (vii) Stone's Creek, southwest of a line beginning at a point on the southeast shore $34^{\circ} 36' 34''$ N -- $77^{\circ} 26' 51''$ W; running 301° (M) to a point on the northwest shore $34^{\circ} 36' 37''$ N -- $77^{\circ} 26' 52''$ W;
 - (viii) Muddy Creek, north of a line beginning at a point on the west shore $34^{\circ} 36' 52''$ N -- $77^{\circ} 26' 38''$ W; running 087° (M) to a point on

- the east shore 34° 36' 52" N -- 77° 26' 37" W;
- (ix) Mill Creek, north of a line beginning at a point on the west shore 34° 37' 11" N -- 77° 25' 47" W; running 109° (M) to a point on the east shore 34° 37' 11" N -- 77° 25' 37" W;
 - (x) Whitehurst Creek, west and south of a line beginning at a point on the south shore 34° 38' 04" N -- 77° 22' 37" W; running 280° (M) to a point on the north shore 34° 38' 04" N -- 77° 22' 38" W;
 - (xi) Town Creek, west of a line beginning at a point on the south shore 34° 39' 34" N -- 77° 23' 06" W; running 007° (M) to a point on the north shore 34° 39' 37" N -- 77° 23' 06" W;
 - (xii) Lewis Creek, southwest of a line beginning at a point on the southeast shore 34° 40' 56" N -- 77° 24' 56" W; running 301° (M) to a point on the northwest shore 34° 40' 55" N -- 77° 24' 58" W;
 - (xiii) Northeast Creek, east of a line beginning at a point on the south shore 34° 43' 23" N -- 77° 23' 35" W; running 316° (M) to a point at the mouth of Scale's Creek 34° 43' 46" N -- 77° 24' 06" W;
 - (xiv) Southwest Creek, southwest of a line beginning at a point on the east shore 34° 41' 30" N -- 77° 25' 20" W; running 328° (M) to a point on the north shore 34° 41' 50" N -- 77° 25' 40" W;
 - (xv) Upper New River, north of a line beginning at a point on Mumford Point 34° 43' 15" N -- 77° 25' 00" W; running 271° (M) through Beacon No. 53 to a point on the west shore 34° 43' 14" N -- 77° 25' 49" W;
- (d) Chadwick Bay, all waters between a line beginning at a point on Roses Point 34° 32' 12" N -- 77° 22' 19" W; running 075° (M) to Marker No. 6 and the IWW:
- (i) Fullard Creek (including Charles Creek), northwest of a line beginning at a point on the south shore 34° 32' 03" N -- 77° 22' 41" W; running 326° (M) to a point on the north shore 34° 32' 12" N -- 77° 22' 50" W;
 - (ii) Bump's Creek, north of a line beginning at a point on the west shore 34° 32' 19" N -- 77° 22' 29" W; running 035° (M) to a point on the east shore 34° 32' 28" N -- 77° 22' 23" W.
- (14) Stump Sound Area: Stump Sound, all waters north and south of IWW from Beacon No. 15 34° 31' 03" N -- 77° 22' 17" W; to Marker No. 78 34° 25' 23" N -- 77° 34' 12" W; except 100 feet of either side of the IWW from Beacon No. 49 at Morris Landing to Marker No. 78 at the mouth of Beckys Creek and except the dredged canals at Old Settler's Beach and the dredged channel from the IWW north of Marker No. 57 to the Old Settler's Beach Canals.
- (15) Topsail Sound Area:
- (a) Virginia Creek, all waters northwest of a line beginning on the southwest shore at a point near the mouth 34° 24' 48" N - 77° 35' 38" W; running 056° (M) 700 yards to a point 34° 25' 02" N - 77° 35' 19" W; thence running 074° (M) 1900 yards and intersecting the nursery area line at Becky's Creek at a point 34° 25' 24" N - 77° 34' 16" W, with the exception of the natural channel as marked by the North Carolina Division of Marine Fisheries;
 - (b) Old Topsail Creek, all waters northwest of a line beginning at a point on the southwest shore 34° 21' 33" N - 77° 40' 37" W; running 065° (M) to a point on the northeast shore 34° 21' 43" N - 77° 40' 14" W, with the exception of the dredged channel as marked by the North Carolina Division of Marine Fisheries;
 - (c) Topsail Sound, all waters enclosed within a line starting at beacon "BC" 34° 24' 35" N -- 77° 35' 43" W; running 174° (M) to a point 34° 23' 58" N -- 77° 35' 33" W; running 235° (M) to a point 34° 21' 14" N -- 77° 39' 18" W; running 300° (M) to Marker No. 16 34° 21' 32" N -- 77° 40' 15" W; running 056° (M) back to point of origin;
 - (d) Mallard Bay Area, all waters northwest of the IWW from Beacon No. 93 34° 23' 54" N -- 77° 36' 43" W; to Beacon No. 96 34° 22' 34" N -- 77° 38' 48" W.
- (16) Middle Sound Area:
- (a) Howard Channel and Long Point Channel area, all waters southeast of the IWW from Beacon No. 98 34° 21' 33" N -- 77° 40' 32" W to a point on the north side of the Figure 8 Island Marina Channel 34° 16' 28" N -- 77° 45' 35" W [with the exception of Howard Channel from the IWW to New Topsail Inlet, Green Channel from Marker No. 105 to Rich's Inlet, Butler's Creek (Utley's Channel) from the IWW, north of Marker No. 112, to Nixon's Channel, and Nixon's Channel from IWW to Rich's Inlet; Tributaries to above named channels will remain closed.];
 - (b) Futch Creek, northwest of a line beginning at a point on the north shore of Porter's Neck 34° 18' 00" N -- 77° 44' 33" W; running 064° (M) to a point on Baldeagle Point 34° 18' 09" N -- 77° 44' 22" W;
 - (c) Page's Creek, northwest of a line beginning at a point on the north shore 34° 16' 46" N -- 77° 46' 42" W; running 229° (M) to a point on the south shore 34° 16' 38" N -- 77° 46' 51" W;

- (d) All waters bound on the north by the Figure Eight Island Causeway, on the east by Mason's Channel, on the south by Mason's Inlet Channel and on the west by the Intracoastal Waterway, with the exception of Mason's Channel.
- (17) Greenville Sound Area:
- (a) Shell Island area, all waters east of the IWW from Marker No. 123 34° 14' 52" N -- 77° 47' 00" W to a point on the north shore of Old Moore Inlet Channel 34° 13' 56" N -- 77° 47' 48" W;
 - (b) Howe Creek (Moore's Creek), northwest of a line beginning at a point on the south shore 34° 14' 42" N -- 77° 47' 26" W; running 030° (M) to a point on the north shore 34° 14' 53" N -- 77° 47' 13" W;
 - (c) Bradley Creek, west of Highway 17, 74 and 76 bridge;
 - (d) Wrightsville Beach area, all waters in an area enclosed by a line beginning at a point across the IWW from the mouth of Bradley Creek 34° 12' 21" N - 77° 49' 08" W, running 091° (M) to a point (near the Borrow Pit) 34° 12' 22" N - 77° 48' 32" W, running 144° (M) to a point 34° 11' 56" N - 77° 48' 19" W, running 224° (M) to a point 34° 11' 20" N - 77° 49' 05" W; running 306° (M) to a point 34° 11' 30" N - 77° 49' 31" W; running 024° (M) back to point of origin.
- (18) Masonboro Sound Area:
- (a) Masonboro--Myrtle Grove Sound area (west side)--all waters west northwest of the IWW beginning at a point at the mouth of Bradley Creek 34° 12' 23" N -- 77° 49' 14" W; to Beacon No. 161 34° 03' 32" N -- 77° 53' 22" W;
 - (b) Masonboro--Myrtle Grove Sound area (east side) - all waters south and southeast of a line beginning at a point on the north end of Masonboro Island 34° 11' 06" N - 77° 48' 51" W; running 301° (M) to a point near IWW Marker No. 129 34° 11' 22" N - 77° 49' 36" W; thence running along the east side of the IWW to Marker No. 161 34° 03' 32" N - 77° 53' 22" W; (with the exception of Old Masonboro Channel and Carolina Beach Inlet Channel).
- (19) Cape Fear River Area:
- (a) Cape Fear River, all waters north of a line beginning at a point on the east shore 34° 10' 25" N -- 77° 57' 03" W; running 275° (M) through Beacon No. 53 to a point on the west shore 34° 10' 25" N -- 77° 57' 46" W with the exception of the maintained channel, and all waters north of a line beginning at a point on the east shore 34° 04' 38" N -- 77° 55' 28" W; running 275° (M) through Beacon No. 37 to a point on the west shore 34° 04' 38" N -- 77° 56' 31" W, with the exception of 300 yards east and west of the main shipping channel up to Beacon No. 53 (mouth of Brunswick River);
- (b) The Basin (Ft. Fisher area), east of a line beginning at a point on the north shore 33° 57' 17" N -- 77° 56' 08" W; running 156° (M) to a point on the south shore 33° 57' 04" N -- 77° 56' 07" W;
- (c) Walden Creek, northwest of county road No. 1528 bridge;
- (d) Baldhead Island Creeks:
- (i) Baldhead Creek, southeast of a line beginning at a point on the south shore 33° 51' 42" N -- 77° 59' 10" W; running 070° (M) to a point on the north shore 33° 52' 07" N -- 77° 59' 06" W;
 - (ii) Cape Creek, southeast of a line beginning at a point on the south shore 33° 51' 39" N -- 77° 58' 28" W; running 026° (M) to a point on the north shore 33° 52' 05" N -- 77° 58' 23" W;
 - (iii) Bluff Island Creek (East Beach Creek), south of a line beginning at a point on the west shore 33° 52' 39" N -- 77° 58' 11" W; running 092° (M) to a point on the east shore 33° 52' 40" N -- 77° 58' 07" W;
 - (iv) Deep Creek, south of a line from a point on the southwest shore 33° 52' 42" N -- 77° 58' 05" W; running 046° (M) to a point on the northeast shore 33° 52' 46" N -- 77° 58' 01" W;
- (e) Dutchman Creek, north of a line beginning at a point on the east shore 33° 55' 07" N -- 78° 02' 39" W; running 294° (M) to a point on the west shore 33° 55' 08" N -- 78° 02' 44" W;
- (f) Denis Creek, west of a line beginning at a point on the south shore 33° 55' 00" N -- 78° 03' 32" W; running 006° (M) to a point on the north shore 33° 55' 02" N -- 78° 03' 32" W;
- (g) Piney Point Creek, west of a line beginning at a point on the south shore 33° 54' 32" N -- 78° 03' 32" W; running 007° (M) to a point on the north shore 33° 54' 37" N -- 78° 03' 31" W;
- (h) Molasses, Coward and Smokehouse Creeks, all waters bound by the IWW and the Elizabeth River on the north and east, the Oak Island Coast Guard canal on the east, Oak Island on the south and the CP and L Discharge canal on the west;
- (i) Oak Island area, all waters north and south of the IWW from Marker No. 9 33° 55' 12" N -- 78° 03' 49" W; to Beacon No. 18 33° 55' 45" N -- 78° 10' 17" W.
- (20) Lockwoods Folly Inlet Area:
- (a) Davis Creek and Davis Canal, east of a line beginning at a point on the north shore 33° 55' 13" N -- 78° 10' 43" W; running 198° (M) to

- a point on the south shore 33° 54' 59" N -- 78° 10' 43" W;
- (b) Lockwoods Folly River, north of a line beginning at a point on the east shore 33° 56' 35" N -- 78° 12' 47" W; running 268° (M) to a point on the west shore 33° 56' 34" N -- 78° 13' 24" W;
- Spring Creek (Galloway Flats area), all waters northwest of a line beginning at a point on the south shore 33° 55' 31" N -- 78° 13' 48" W; running 040° (M) to a point on the north shore 33° 55' 41" N -- 78° 13' 42" W.
- (21) Shallotte Inlet Area:
- (a) Shallotte River, north of a line beginning at a point on Bill Holden's Landing 33° 55' 52" N -- 78° 22' 07" W; running 024° (M) to a point on Gibbins Point 33° 56' 20" N -- 78° 21' 54" W;
- (b) Shallotte River, excluding Gibbs Creek, north of a line beginning at Long Point 33° 54' 20" N - 78° 21' 42" W; running 312° (M) to a point on Sage Island 33° 54' 37" N - 78° 22' 06" W; east of a line beginning at Sage Island running 026° (M) to a point 33° 55' 06" N - 78° 22' 09" W, and south of a line beginning at the previous point running 081° (M) to a point on the shore 33° 55' 18" N - 78° 21' 35" W;
- (c) Shallotte Creek (Little Shallotte River), east of a line beginning at a point on Shell Landing 33° 55' 44" N -- 78° 21' 40" W; running 159° (M) to a point on Boone's Neck Point 33° 55' 35" N -- 78° 21' 34" W;
- (d) Saucepan Creek, northwest of a line beginning at a point on the east shore (mouth of Old Mill Creek) 33° 54' 56" N -- 78° 23' 28" W; running 182° (M) to a point on the west shore 33° 54' 41" N -- 78° 23' 28" W;
- (e) Old Channel area, all waters south of the IWW from Beacon No. 83 33° 54' 16" N -- 78° 23' 17" W; to Ocean Isle Beach bridge 33° 53' 44" N -- 78° 26' 22" W; except the dredged finger canals at Ocean Isle Beach located on the south side of the IWW between the Ocean Isle Beach Bridge and IWW Marker No. 90.
- (22) Little River Inlet Area:
- (a) Gause Landing area, all waters north of the IWW from Beacon No. 90 33° 53' 53" N -- 78° 25' 37" W to the South Carolina line;
- (b) Eastern Channel Area:
- (i) Needhamhole Creek, north of a line beginning at a point on the east shore 33° 53' 19" N -- 78° 26' 48" W; running 274° (M) to a point on the west shore 33° 53' 19" N -- 78° 26' 51" W;
- (ii) Springbranch Creek, north of a line beginning at a point on the east shore 33° 53' 14" N -- 78° 27' 17" W; running 250° (M) to a point on the west shore 33° 53' 13" N -- 78° 27' 21" W;
- (iii) Goldmine Creek, north of a line beginning at a point on the east shore 33° 53' 13" N -- 78° 27' 33" W; running 260° (M) to a point on the west shore 33° 53' 13" N -- 78° 27' 36" W;
- (iv) Clam Creek, north of a line beginning at a point on the east shore 33° 53' 12" N -- 78° 27' 55" W; running 219° (M) to a point on the west shore 33° 53' 10" N -- 78° 27' 55" W;
- (v) Sol's Creek, all waters north of a line beginning at a point on the east shore 33° 53' 02" N -- 78° 28' 08" W; running 224° (M) to a point on the west shore 33° 53' 00" N -- 78° 28' 12" W; and all waters south of a line beginning at a point on the east shore of Sol's Creek 33° 53' 22" N -- 78° 28' 10" W; running 252° (M) to a point on the west shore 33° 53' 21" N -- 78° 28' 14" W;
- (vi) Horseford Creek, north of a line beginning at a point on the east shore 33° 52' 53" N -- 78° 28' 24" W; running 279° (M) to a point on the west shore 33° 52' 53" N -- 78° 28' 29" W;
- (vii) Still Creek, all waters north of a line beginning at a point on the east shore, 33° 52' 53" N -- 78° 28' 44" W; running 254° (M) to a point on the west shore 33° 52' 51" N -- 78° 28' 48" W; and all waters south of a line beginning at a point on the east shore of Still Creek, 33° 53' 15" N -- 78° 29' 02" W; running 270° (M) to a point on the west shore 33° 53' 15" N -- 78° 29' 05" W;
- (viii) Cooter Creek, north of a line beginning at a point on the east shore 33° 52' 52" N -- 78° 29' 46" W; running 288° (M) to a point on the west shore 33° 52' 53" N -- 78° 29' 49" W;
- (c) The Big Narrows Area:
- (i) Big Teague Creek, west of a line beginning at a point on the south shore 33° 52' 46" N -- 78° 29' 59" W; running 343° (M) to a point on the north shore 33° 52' 47" N -- 78° 30' 01" W;
- (ii) Little Teague Creek, west of a line beginning at a point on the south shore 33° 52' 54" N -- 78° 30' 09" W; running 306° (M) to a point on the north shore 33° 52' 54" N -- 78° 30' 10" W;
- (iii) Big Norge Creek, south of a line beginning at a point on the west shore 33° 52' 50" N -- 78° 30' 39" W; running 076° (M) to a point on the east shore 33° 52' 51" N -- 78° 30' 36" W;
- (d) Mad Inlet area, all waters south of the IWW from the Sunset Beach bridge 33° 52' 52" N --

- 78° 30' 42" W to the South Carolina line with the exception of Bonaparte Creek;
- (e) Calabash River, east of state road No. 1164 bridge.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

.0004 PERMANENT SECONDARY NURSERY AREAS

The permanent secondary nursery areas referenced in 15A NCAC 3N .0005(a) and (c) are delineated in the following coastal water areas:

- (1) In the Pamlico Sound Area:
 - (a) Long Shoal River - north of a line beginning at a point on Pains Point 35° 35' 07" N - 75° 51' 25" W, running 282° (M) to a point on the west shore at the 5th Avenue Canal 35° 35' 12" N - 75° 53' 16" W;
 - (b) Pains Bay - east of a line beginning at a point on the south shore 35° 34' 28" N - 75° 50' 58" W, running 350° (M) to a point on the north shore 35° 35' 04" N - 75° 51' 12" W;
 - (c) Wysocking Bay - north and west of a line beginning at Benson Point 35° 22' 58" N - 76° 03' 39" W, running 058° (M) to Long Point 35° 24' 37" N - 76° 01' 19" W;
 - (d) Juniper Bay-Cunning Harbor - north of a line beginning at a point on the west shore of Juniper Bay 35° 20' 34' 33" N - 76° 15' 28" W, running 105° (M) ~~through Juniper Bay Point~~ to a point 35° 20' 18" N - 76° 13' 20" W thence to a point on the east shore of Cunning Harbor 35° 20' 15" N - 76° 12' 23" W;
 - (e) Swanquarter Bay - north of a line beginning at a point at The Narrows 35° 20' 54 55" N - 76° 20' 38 39" W, running 080° (M) to a point on the east shore 35° 21' 34 36" N - 76° 18' 22 23" W;
 - (f) Deep Cove-The Narrows - north and east of a line beginning at a point on the west shore 35° 20' 54" N - 76° 23' 52 54" W, running 122° (M) to a point on the east shore 35° 20' 34' 33" N - 76° 22' 57 55" W, and west of a line at The Narrows beginning at a point on the north shore 35° 20' 54 42" N - 76° 20' 38 35" W, running 175° (M) to a point on the south shore 35° 20' 44 55" N - 76° 20' 35 39" W;
 - (g) Rose Bay - north of a line beginning at a point on the west shore 35° 23' 17" N - 76° 26' 10" W, running 144° (M) to a point on Judith Island 35° 22' 29" N - 76° 25' 15" W;
 - (h) Spencer Bay - west and north of a line beginning at a point on Willow Point 35° 22' 22" N - 76° 27' 52" W, running 065° (M) to a point 35° 23' 17" N - 76° 26' 10" W;
 - (i) Able Bay - north and east of a line beginning at a point on the west shore 35° 23' 36 39" N - 76° 31' 00 03" W, running 130° (M) to a point on the east shore 35° 23' 00" N - 76° 29' 47' 44" W;
- (j) Mouse Harbor - west of a line beginning at a point on the south shore 35° 17' 43 12" N - 76° 28' 50 53" W, running 352° (M) to a point on the north shore 35° 18' 49 23" N - 76° 29' 06 03" W;
- (k) Big Porpoise Bay - west of a line beginning at a point on the south shore 35° 14' 57" N - 76° 28' 50" W, running 042° (M) to a point on the north shore 35° 15' 41" N - 76° 28' 12" W;
- (l) Middle Bay - west of a line beginning at a point on the south shore 35° 13' 33 31" N - 76° 29' 36" W, running 022° (M) to a point on the north shore 35° 14' 45 48" N - 76° 29' 44' 12" W;
- (m) Jones Bay - west of a line beginning at a point on Boar Point 35° 12' 22 19" N - 76° 31' 16" W, running 011° (M) to a point on Mink Trap Point 35° 13' 27 30" N - 76° 31' 08" W;
- (n) In the Bay River Area:
 - (i) Bonner Bay - south of a line beginning at a point on the west shore 35° 09' 36" N - 76° 36' 44' 15" W, running 074° (M) to a point on the east shore 35° 09' 57" N - 76° 35' 44' 12" W;
 - (ii) Gales Creek-Bear Creek (tributaries of Bay River) - north and west of a line beginning at a point on Sanders Point 35° 11' 17" N - 76° 35' 54" W, running 067° (M) through Beacon No. 27 to a point on the east shore 35° 11' 54" N - 76° 34' 17" W;
- (2) In the Pamlico River Area:
 - (a) (In the Pungo River Area): Fortescue Creek, east of a line beginning at a point on the north shore 35° 25' 55" N - 76° 31' 58" W; running 195° (M) to a point on the south shore 35° 25' 36" N - 76° 32' 01" W;
 - (b) North Creek - north of a line beginning at a point on the west shore 35° 25' 24" N - 76° 40' 04' 06" W, running ~~420~~ 114° (M) through Marker No. 4 to a point on the east shore 35° 25' 46 18" N - 76° 40' 39 48 39" W;
 - (c) In the Goose Creek area:
 - (i) Campbell Creek - west of a line beginning at a point on the south shore 35° 17' 00" N - 76° 37' 06" W, running 349° (M) to a point on the west shore 35° 17' 19" N - 76° 37' 08" W;
 - (ii) Eastham Creek - east of a line beginning at a point on the south shore 35° 17' 36" N - 76° 36' 24" W, running 327° (M) to a point on the north shore 35° 17' 44" N - 76° 36' 30" W;
 - (d) Oyster Creek-Middle Prong - southwest of a line beginning at a point on Cedar Island 35° 19'

28° N - 76° 32' 14" W, running 135° (M) to a point on Beard Island Point 35° 19' 10" N - 76° 31' 44" W;

(3) In the Neuse River Area:

- (a) Lower Broad Creek - northwest of a line beginning at a point on the northeast shore 35° 05' 47" N - 76° 35' 25" W, running 228° (M) to a point on the southwest shore 35° 05' 34" N - 76° 35' 43" W;
- (b) Greens Creek - ~~above Highway 1308 Bridge north of a line beginning at a point on the west shore of Greens Creek 35° 01' 20" N - 76° 42' 10" W; running 055° (M) to a point on the east shore 35° 01' 30" N - 76° 41' 59" W;~~
- (c) Dawson Creek - ~~above Highway 1302 Bridge north of a line beginning at a point on the west shore 34° 59' 35" N - 76° 45' 28" W; running 120° (M) to a point on the east shore 34° 59' 34" N - 76° 45' 25" W;~~
- (d) Clubfoot Creek - south of a line beginning at a point on the east shore 34° 54' 29" N - 76° 45' 26" W, running 284° (M) to a point on the west shore 34° 54' 33" N - 76° 45' 43" W;
- (e) (In the Adams Creek Area) Cedar Creek - east of a line beginning at a point on the south shore 34° 55' 52" N - 76° 38' 49" W, running 004° (M) to a point on the north shore 34° 56' 05" N - 76° 38' 48" W;
- (4) Virginia Creek - all waters of the natural channel northwest of the primary nursery area line;
- (5) Old Topsail Creek - all waters of the dredged channel northwest of the primary nursery area line;
- (6) Mill Creek - all waters west of a line beginning at a point on the south shore 34° 24' 17" N - 77° 42' 15" W, running 028° (M) to a point on the north shore 34° 20' 36" N - 77° 42' 06" W;
- (7) Pages Creek - all waters west of a line beginning at a point on the south shore 34° 15' 52" N - 77° 46' 18" W, running 044° (M) to a point on the north shore 34° 16' 09" N - 77° 46' 01" W;
- (8) Bradley Creek - all waters west of a line beginning on the south shore 34° 12' 23" N - 77° 49' 14" W, running 021° (M) to a point on the north shore 34° 12' 38" N - 77° 49' 09" W;
- (9) Davis Creek, all waters east of a line beginning at a point on Oak Island 33° 54' 51" N - 78° 12' 49" W, running 010° (M) to a point on Horse Island 33° 54' 57" N - 78° 12' 49" W and Davis Canal, all waters southeast of a line beginning at a point on a spoil island at the southwest intersection of the ICWW and Davis Canal 33° 55' 23" N - 78° 11' 39" W, running 060° (M) across the mouth of Davis Canal to a point on Pinner Point 33° 55' 26" N - 78° 11' 38" W.

.0005 SPECIAL SECONDARY NURSERY AREAS

The special secondary nursery areas referenced in 15A NCAC 3N .0005 (b) and (c) are delineated in the following coastal water areas:

- (1) In the Pamlico River Area, Pamlico River, west of a line beginning at a point on Mauls Point 35° 26' 56" N - 76° 55' 33" W; running 073° (M) to a point on Ragged Point 35° 27' 33" N - 76° 54' 21" W:
 - (a) Pungo River:
 - (i) Pungo Creek, west of a line beginning at a point on Persimmon Tree Point 35° 31' 06" N - 76° 37' 49" W; running 241° (M) to a point on Windmill Point 35° 30' 48" N - 76° 38' 18" W;
 - (ii) Pungo River, north of a line beginning at a point on the east shore 35° 32' 05" N - 76° 28' 09" W; running 277° (M) through Beacon No. 21 to a point on the west shore 35° 32' 12" N - 76° 29' 15" W;
 - (iii) Scranton Creek, south and east of a line beginning at a point on the west shore 35° 30' 37 43" N - 76° 28' 36 43" W; running 085° (M) to a point on the east shore 35° 30' 39 41" N - 76° 28' 42 23" W;
 - (iv) Slade Creek, east of a line beginning at a point on the south shore 35° 27' 39" N - 76° 32' 46" W; running 328° (M) to a point on the north shore 35° 27' 52" N - 76° 33' 00" W;
 - (b) South Creek, west of a line beginning at a point on Hickory Point 35° 21' 44" N - 76° 41' 37" W; running 195° (M) to a point on Fork Point 35° 20' 44" N - 76° 41' 48" W;
 - (c) Bond Creek/Muddy Creek, south of a line beginning at a point on Fork Point 35° 20' 44" N - 76° 41' 48" W; running 135° (M) to a point on Gum Point 35° 20' 32" N - 76° 41' 30" W;
- (2) In the Neuse River Area:
 - (a) Goose Creek, north and east of a line beginning at a point on the south shore 35° 02' 08" N - 76° 56' 02" W; running 331° (M) to a point on the north shore 35° 02' 37" N - 76° 56' 27" W;
 - (b) Upper Broad Creek, northeast of a line beginning at a point on the north shore 35° 03' 26" N - 76° 57' 14" W; running 153° (M) to a point on the south shore 35° 02' 56" N - 76° 56' 49" W;
- (3) In the West Bay Area:
 - (a) West Thorofare Bay - south of a line beginning at a point on the west shore 34° 57' 22" N - 76° 24' 03" W, running 090° (M) through FL R "10WB" to a point on the east shore 34° 57' 28" N - 76° 23' 06" W;
 - (b) Long Bay-Ditch Bay - west of a line beginning at a point 34° 57' 52" N - 76° 26' 37" W, running southwest 226° (M) to a point 34° 57' 13" N - 76° 27' 13" W, thence south of a line

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

- running southeast 134° (M) to a point 34° 56' 46" N - 76° 26' 26" W;
- (c) Turnagain Bay - south of a line beginning at a point on the west shore at 34° 59' 23" N - 76° 30' 11"; thence running 084° (M) to a point on the east shore at 34° 59' 33" N - 76° 29' 23" W;
- (4) In the Core Sound Area:
- (a) Cedar Island Bay - northwest of a line beginning at a point near the telephone tower 34° 57' 49" N - 76° 16' 58" W, running 049° (M) to a point at the gun club or "clubhouse" dock 34° 58' 43" N - 76° 16' 00" W;
- (b) Thorofare Bay-Barry Bay - northwest of a line beginning at a point on Hall Point 34° 54' 25" N - 76° 19' 09" W, running 046° (M) to a point at Rumley Hammock 34° 55' 27" N - 76° 18' 13" W;
- (c) Nelson Bay - northwest of a line beginning at a point on the west shore of Nelson Bay 34° 51' 08" N - 76° 24' 36" W, and running 062° (M) through Beacon No. 1 in Nelson Bay to a point on Drum Point 34° 51' 36" N - 76° 23' 48" W;
- (d) Brett Bay - all waters north of a line beginning at Piney Point 34° 49' 32" N - 76° 25' 06" W; running 258° (M) to a point on the west shore 34° 49' 23" N - 76° 26' 02" W;
- (e) Jarrett Bay - north of a line beginning at a point east of Davis Island 34° 45' 46" N - 76° 28' 45" W, and running 266° (M) to a point on the west shore (site of Old Chimney) 34° 45' 31" N - 76° 30' 04" W;
- (5) In the North River area:
- (a) North River - north of a line beginning at a point on the west shore at the oyster house 34° 46' 28" N - 76° 37' 07" W, running 096° (M) to a point on the east shore 34° 46' 30" N - 76° 35' 47" W;
- (b) Ward Creek - east of a line beginning on the north shore 34° 46' 13" N - 76° 34' 58" W, running 182° (M) to a point on the south shore 35° 34' 45" N - 76° 35' 00" W;
- (6) Newport River - west of a line beginning at Penn Point at 34° 45' 44" N - 76° 43' 35" W; thence running 022° (M) to a point on the north shore at 34° 46' 47" N - 76° 43' 15" W;
- (7) New River upstream of the N.C. Highway 172 Bridge;
- (8) Intracoastal Waterway - all waters in the Intracoastal Waterway maintained channel from Marker No. 17 north of Alligator Bay to Marker No. 49 at Morris Landing and all waters in the Intracoastal Waterway maintained channel and 100 feet on either side from Marker No. 49 to the N.C. Highway 50-210 Bridge at Surf City;
- (9) Cape Fear River - beginning at a point on the south side of the Spoil Island at the intersection of

- the ICWW and the Cape Fear River ship channel 34° 01' 37" N - 77° 56' 05" W, running 106° (M) to a point on the east shore of the Cape Fear River 34° 01' 32" N - 77° 55' 00" W, running south and bounded by the shoreline to a point near the Ferry Slip at Federal Point 33° 57' 52" N - 77° 56' 28" W, running 353° (M) north to a point on Bird Island 33° 58' 24" N - 77° 56' 36" W, running 013° (M) back to point of origin;
- (10) Lockwood Folly River - beginning at a point on Howells Point 33° 55' 21" N - 78° 12' 47" W and running in a westerly direction along the ICWW to a point near ICWW Marker No. 46 33° 55' 18" N - 78° 13' 54" W;
- (11) Saucepan Creek - all waters north of a line beginning at a point on the west shore 33° 54' 36" N - 78° 22' 54" W, running 062° (M) to a point on the east shore 33° 54' 38" N - 78° 22' 49" W.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

.0007 DESIGNATED POT AREAS

(a) As referenced in 15A NCAC 3J .0301, it is unlawful to use pots north and east of the Highway 58 Bridge at Emerald Isle to Rattan Point at the mouth of Neuse River and north and east of Willow Point near Rose Bay from May 1 through October 31, except in areas described below:

- (1) In Albemarle Sound and tributaries.
- (2) In Roanoke Sound and tributaries.
- (3) In Croatan Sound and tributaries.
- (4) In Pamlico Sound and tributaries, except the following areas and areas further described in Paragraphs (5), (6), and (7) of this Rule:
- (A) In Wysocking Bay:
- (i) Bound by a line beginning at a point on the south shore of Lone Tree Creek 35° 25' 05" N - 76° 02' 05" W running 239° (M) 1000 yards to a point 35° 24' 46" N - 76° 02' 32" W; thence 336° (M) 2200 yards to a point 35° 25' 42" N - 76° 03' 16" W; thence 062° (M) 750 yards to a point on shore 35° 25' 54" N - 76° 02' 54" W; thence following the shoreline and the Lone Tree Creek primary nursery area line to the beginning point;
- (ii) Bound by a line beginning at a point on the south shore of Mt. Pleasant Bay 35° 23' 07" N - 76° 04' 12" W running 083° (M) 1200 yards to a point 35° 23' 17" N - 76° 03' 32" W; thence 023° (M) 2400 yards to a point 35° 24' 27" N - 76° 03' 12" W; thence 299° (M) 1100 yards to a point on shore 35° 24' 38" N - 76° 04' 48" W; thence following the shoreline and the Browns Island and Mt. Pleasant Bay primary nursery area line to the beginning point; except pots may be set no more than

50 yards from the shoreline.

- (B) In Juniper Bay bound by a line beginning at a point on Juniper Bay Point 35° 20' 18" N - 76° 13' 22" W running 275° (M) 2300 yards to a point 35° 20' 15" N - 76° 14' 45" W; thence 007° (M) 2100 yards to Daymarker No. 3; thence 040° (M) 1100 yards to a point on shore 35° 21' 45" N - 76° 14' 24" W; thence following the shoreline and the Buck Creek and the Laurel Creek primary nursery area line to the beginning point.
 - (C) In Swanquarter Bay, bound by a line beginning at a point on the north shore of Caffee Bay 35° 21' 57" N - 76° 17' 44" W; running 191° (M) 800 yards to a point on the south shore 35° 21' 35" N - 76° 17' 45" W; thence following the shoreline to a point on shore 35° 21' 37" N - 76° 18' 22" W; thence running 247° (M) 1300 yards to a point 35° 21' 17" N - 76° 19' 03" W; thence 340° (M) 1350 yards to a point 35° 21' 51" N - 76° 19' 27" W; thence 081° (M) 1150 yards to a point on the north shore 35° 22' 02" N - 76° 18' 48" W; thence following the shoreline and the primary nursery area line to the beginning point.
 - (D) In Deep Cove east of a line beginning at a point on the south shore 35° 20' 33" N - 76° 22' 57" W, running 021° (M) 1800 yards to a point on the north shore 35° 21' 55" N - 76° 22' 43" W and west of a line beginning at a point on the south shore 35° 20' 44" N - 76° 22' 05" W running 003° (M) 1400 yards to a point on the north shore 35° 21' 26" N - 76° 22' 11" W.
 - (E) Off Striking Bay bound by a line beginning at a point on the west shore of Striking Bay 35° 23' 20" N - 76° 26' 59" W running 190° (M) 1900 yards to a point 35° 22' 23" N - 76° 27' 00" W; thence 097° (M) 900 yards to Beacon No. 2; thence 127° (M) 1600 yards to a point 35° 21' 55" N - 76° 25' 43" W; thence following the shoreline to a point 35° 22' 30" N - 76° 25' 14" W; thence 322° (M) 2200 yards to a point 35° 23' 17" N - 76° 26' 10" W; thence following the shoreline to a point 35° 23' 19" N - 76° 26' 24" W; thence 335° (M) 900 yards to a point 35° 23' 40" N - 76° 26' 43" W; thence 059° (M) 500 yards to a point 35° 23' 30" N - 76° 26' 58" W; thence following the shoreline to the beginning point.
 - (F) In Rose Bay bound by a line beginning at a point southwest of Swan Point 35° 23' 56" N - 76° 23' 39" W running 288° (M) 1500 yards to a point on shore 35° 24' 03" N - 76° 24' 33" W; thence 162° (M) 1650 yards to a point 35° 23' 19" N - 76° 24' 04" W; thence 084° (M) 1350 yards to a point on shore 35° 23' 29" N - 76° 23' 17" W; thence following the shoreline to the beginning point.
 - (G) In Spencer Bay bound by a line beginning at a point on shore at Willow Point 35° 22' 26" N - 76° 28' 00" W running 059° (M) 1700 yards to a point 35° 22' 57" N - 76° 27' 13" W; thence 317° (M) 1500 yards to a point 35° 23' 25" N - 76° 27' 57" W; thence 243° (M) 1300 yards to a point on shore 35° 23' 02" N - 76° 28' 35" W; thence following the shoreline and the unnamed primary nursery area line to the beginning point.
- (5) In the Point of Marsh Area:
- (A) ~~(Z)~~ In that area bound by a line beginning on the north side of Rattan Bay at a point on the shoreline 35° 03' 45" N - 76° 28' 32" W; thence running 316° (M) 600 yards offshore to a point 35° 03' 54" N - 76° 28' 52" W; thence running parallel with the shoreline 600 yards offshore to a point 35° 04' 09" N - 76° 26' 44" W; thence 239° (M) 600 yards to a point on shore 35° 04' 57" N - 76° 27' 00" W.
 - (B) ~~(DD)~~ In West Bay - North Bay area:
 - (i) In that area bound by a line beginning at a point 35° 02' 32" N - 76° 22' 27" W; thence southwest 220° (M) to Marker No. 5 WB; thence southeast 161° (M) to a point in West Bay 35° 00' 34" N - 76° 21' 50" W; thence southwest 184° (M) to Deep Bend Point 34° 58' 36" N - 76° 21' 48" W; thence following the shoreline of West Bay and North Bay to a point 35° 02' 09" N - 76° 21' 53" W; thence 317° (M) to the beginning point.
 - (ii) In West Bay bound by a line beginning at a point on shore 35° 03' 34" N - 76° 26' 24" W, running 033° (M) 100 yards to a point 35° 03' 38" N - 76° 26' 23" W; thence parallel to the shoreline no more than 100 yards from shore to a point 35° 00' 06" N - 76° 25' 24" W, running 278° (M) to a point on shore 35° 00' 06" N - 76° 25' 28" W.
 - (iii) In West Bay bound by a line beginning at a point 35° 00' 06" N - 76° 25' 28" W, running 098° (M) 500 yards to a point 35° 00' 06" N - 76° 25' 12" W; thence 171° (M) 2800 yards to a point 34° 58' 45" N - 76° 24' 42" W; thence 270° (M) 1400 yards to a point on shore 34° 58' 39" N - 76° 25' 22" W.
 - (C) ~~(EE)~~ In West Thorofare Bay and Merkle Bay south and southeast of a line beginning at a point in West Bay at Tump Point 34° 58' 42" N - 76° 22' 49" W; thence southwest 258° (M) to Marker F1 R15 ft. 3M 8 WB; thence

southwest 203° (M) to Long Bay Point 34° 57' 52" N - 76° 24' 12" W.

(D) ~~(FF)~~ In Long Bay:

- (i) In that area bound by a line beginning at a point on the south side of Stump Bay in Long Bay 34° 57' 13" N - 76° 27' 12" W; running northeast 077° (M) across Stump Bay to a point 34° 57' 39" N - 76° 25' 51" W; thence 032° (M) to a point 34° 58' 39" N - 76° 25' 22" W, following the shoreline to the beginning point.
- (ii) Southwest of a line beginning on the west shore 34° 57' 13" N - 76° 27' 12" W, running 134° (M) to a point on the east shore at Swimming Point 34° 56' 46" N - 76° 26' 26" W.
- (iii) In the area bound by a line beginning at a point on shore at Swimming Point 34° 56' 46" N - 76° 26' 26" W, running 314° (M) 300 yards to a point 34° 56' 52" N - 76° 26' 33" W; thence parallel to the shoreline no more than 300 yards from shore to a point 34° 58' 03" N - 76° 24' 10" W; thence 203° (M) to Long Bay Point 34° 57' 52" N - 76° 24' 12" W.

(E) ~~(GG)~~ Raccoon Island, on the northeast shore between a point on the northwest shore 35° 04' 27" N - 76° 26' 16" W and a point on the southwest shore 35° 04' 00" N - 76° 25' 33" W from the shoreline no more than 150 yards from shore; on the south and west shores, no more than 50 yards from the shoreline.

(6) ~~(8)~~ Core Sound, Back Sound and the Straits and their tributaries.

(7) ~~(9)~~ North River:

(A) In that area bound by a line beginning at a point on the shore on the east side of North River south of Goose Bay 34° 43' 35" N - 76° 34' 55" W; thence running 252° (M) to a point in the river 34° 43' 28" N - 76° 35' 14" W; thence running 355° (M) to a point in the river 34° 45' 20" N - 76° 35' 45" W; thence running 060° (M) to a point in the river 34° 45' 45" N - 76° 35' 04" W; thence running 165° (M) to a point on the shore at the mouth of South Leopard Creek 34° 45' 36" N - 76° 34' 59" W; thence with the shoreline to the point of beginning.

(B) In that area bound by a line beginning at a point on the west side of North River near Steep Point 34° 43' 40" N - 76° 37' 20" W; thence running 040° (M) to a point 34° 44' 35" N - 76° 36' 36" W; thence running 291° M 300 yards to a point 34° 44' 37" N - 76° 36' 45" W; thence running 219° (M) to a point 34° 44' 13" N - 76° 37' 05" W; thence running 307° (M) to a point 34° 44' 16" N -

76° 37' 12" W; thence running 018° (M) to a point 34° 45' 20" N - 76° 36' 56" W following the shoreline to the beginning point.

(C) In that area of the North River marshes bound by a line beginning at Red Flasher No. "6" running 038° (M) along the southeast side of Steep Point Channel through Red Day Marker No. "8" to a point 34° 44' 08" N - 76° 36' 52" W; thence 125° (M) to a point 34° 43' 48" N - 76° 36' 08" W; thence 144° (M) to a point 34° 43' 30" N - 76° 35' 47" W; thence 188° (M) to a point 34° 42' 23" N - 76° 35' 47" W; thence 221° (M) to Red Flasher No. "56"; thence 278° (M) to a point 34° 42' 14" N - 76° 36' 43" W; thence 346° (M) to a point 34° 42' 45" N - 76° 36' 58" W; thence 008° (M) to a point 34° 43' 14" N - 76° 36' 58" W; thence 318° (M) to the beginning point.

(D) In the area north of a line beginning on the east shore at 34° 46' 11" N - 76° 35' 13" W; thence running 270° (M) to a point on the west shore at 34° 46' 11" N - 76° 37' 01" W.

(8) ~~(10)~~ Newport River:

(A) In that area east and south of a line beginning at a point on the south shore 34° 45' 30" N - 76° 43' 10" W; thence running 026° (M) to a point on the north shore Newport River near Oyster Creek; thence following the shoreline to a point on the west bank of Core Creek at 34° 47' 05" N - 76° 41' 14" W; thence running 099° (M) through Marker "21" to a point on the east shore at 34° 47' 05" N - 76° 41' 10" W; thence following the shoreline southward to Gallant Point at 34° 44' 00" N - 76° 40' 19" W; thence running 271° (M) to Marker "2" at 34° 43' 58" N - 76° 40' 32" W; thence running 148° (M) to a point at 34° 43' 42" N - 76° 40' 05" W; thence running 182° (M) to a point at 34° 43' 21" N - 76° 40' 11" W at the Beaufort Causeway; thence running west with U.S. Highway 70 and the shoreline as the southern border to the point of beginning.

(B) In that area north and east of a line beginning at Penn Point 34° 45' 44" N - 76° 43' 35" W; thence running 022° (M) to a point on the north shore 34° 46' 47" N - 76° 43' 15" W near White Rock. In that area bound by a line beginning at a point on the shore on the south side of Russell's Creek 34° 45' 28" N - 76° 39' 46" W running 278° (M) 1000 yards to Quick Flasher Beacon No. 29 in the Intra-coastal Waterway; thence running 173° (M) 1700 yards with the shoal to a point 34° 44' 37" N - 76° 40' 06" W; thence 195° (M) 1050 yards to a point on Gallant Point 34° 44'

06° N - 76° 40' 11" W; thence east and north with the shoreline to the beginning point.

(C) ~~In the mouth of Harlowe Creek north of a line beginning at a point near White Rock 34° 46' 28" N - 76° 43' 28" W, running 089° (M) to a point 34° 46' 33" N - 76° 42' 46" W.~~

(9) ~~(11)~~ Bogue Sound:

(A) In that area bound by a line beginning at a point 34° 42' 40" N - 76° 77' 49" 00' 24 48" W on the south shore of Bogue Sound at Archer Point (locally known as McGinnis Point) running 008 014° (M) to Channel Marker No. 37 at 34° 41' 15" N - 77° 00' 43" W and in the east by the a point in Bogue Sound 34° 43' 12" N - 76° 49' 24" W thence running 099° (M) to Atlantic Beach Bridge 34° 43' 08" N - 76° 44' 12" W; thence 119° (M) to a point on the shore at Tar Landing Bay 34° 42' 30" N - 76° 42' 12" W; thence 191° (M) to a point on Bogue Banks 34° 42' 00" N - 76° 42' 15" W; thence with the shoreline to the beginning point.

(B) In that area north of the Intracoastal Waterway beginning at the Atlantic Beach Bridge and running parallel with the Intracoastal Waterway to the Highway 58 Bridge to Channel Marker (Beacon) No. 39 at Bogue (Guthrie Point).

(C) ~~In that area on the north side of the Intracoastal Waterway from the Old Ferry Channel to the Highway 58 bridge.~~

(10) ~~(13)~~ West and south of the Highway 58 Bridge at Emerald Isle from May 1 through October 31 in areas and during such times as the Fisheries Director shall designate by proclamation.

(b) It is unlawful to use pots from May 1 through October 31 in the areas described in Subparagraphs (b) (1) through (6 4) of this Rule except in accordance with 15A NCAC 3J .0301(a)(2)(B):

(1) In Wysocking Bay:

(A) Bound by a line beginning at a point on the south shore of Lone Tree Creek 35° 25' 05" N - 76° 02' 05" W running 239° (M) 1000 yards to a point 35° 24' 46" N - 76° 02' 32" W; thence 336° (M) 2200 yards to a point 35° 25' 42" N - 76° 03' 16" W; thence 062° (M) 750 yards to a point on shore 35° 25' 54" N - 76° 02' 54" W; thence following the shoreline and the Lone Tree Creek primary nursery area line to the beginning point;

(B) Bound by a line beginning at a point on the south shore of Mt. Pleasant Bay 35° 23' 07" N - 76° 04' 12" W running 083° (M) 1200 yards to a point 35° 23' 17" N - 76° 03' 32" W; thence 023° (M) 2400 yards to a point 35° 24' 35" N - 76° 04' 00" W; thence 299° (M) 1100 yards to point on shore 35° 24' 38" N -

76° 04' 48" W; thence following the shoreline and the Browns Island and Mt. Pleasant Bay primary nursery area line to the beginning point; except pots may be set no more than 50 yards from the shoreline;

(2) In Juniper Bay bound by a line beginning at a point on Juniper Bay Point 35° 20' 18" N - 76° 13' 22" W running 275° (M) 2300 yards to a point 35° 20' 15" N - 76° 14' 45" W; thence 007° (M) 2100 yards to Daymarker No. 3; thence 040° (M) 1100 yards to a point on shore 35° 21' 45" N - 76° 14' 24" W; thence following the shoreline and the Buck Creek primary nursery area line to the beginning point;

(3) In Rose Bay bound by a line beginning at a point southwest of Swan Point 35° 23' 56" N - 76° 23' 39" W running 288° (M) 1500 yards to a point 35° 24' 03" N - 76° 24' 33" W; thence 162° (M) 1650 yards to a point 35° 23' 19" N - 76° 24' 04" W; thence 084° (M) 1350 yards to a point on shore 35° 23' 29" N - 76° 23' 17" W; thence following the shoreline to the beginning point;

(4) In Spencer Bay bound by a line beginning at a point on shore at Willow Point 35° 22' 26" N - 76° 28' 00" W running 059° (M) 1700 yards to a point 35° 22' 57" N - 76° 27' 13" W; thence 317° (M) 1500 yards to a point 35° 23' 25" N - 76° 27' 57" W; thence 243° (M) 1300 yards to a point on shore 35° 23' 02" N - 76° 28' 35" W; thence following the shoreline to the beginning point;

(c) As referenced in 15A NCAC 3J .0301(a)(3), it is unlawful to use pots north of Rattan Point at the mouth of Neuse River to Willow Point near Rose Bay from June 15 through September 30, except in areas described below:

(1) In Pamlico Sound, except in the following areas:

(A) ~~(H)~~ In Big Porpoise Bay bound by a line beginning at a point on shore 35° 15' 58" N - 76° 29' 10" W running 182° (M) 750 yards to Sage Point 35° 15' 36" N - 76° 29' 06" W; thence 116° (M) 850 yards to a point 35° 15' 28" N - 76° 28' 36" W; thence 023° (M) 700 yards to a point on shore 35° 15' 48" N - 76° 28' 30" W; thence following the shoreline to the beginning point.

(B) ~~(H)~~ In Middle Bay bound by a line beginning at Middle Bay Point 35° 14' 53" N - 76° 28' 41" W; running 210° (M) 3650 yards to Sow Island Point 35° 13' 09" N - 76° 29' 28" W; thence following the shoreline of Middle Bay to Big Fishing Point 35° 14' 05" N - 76° 29' 52" W; thence 008° (M) 1100 yards to a point on the north shore 35° 14' 31" N - 76° 29' 52" W; thence following the shoreline to the point of beginning.

(C) ~~(H)~~ In Jones Bay bound by a line beginning at

a point on Sow Island Point 35° 13' 09" N - 76° 29' 28" W running 204° (M) 2600 yards to Green Flasher No. 5; thence 322° (M) 2450 yards to a point 35° 12' 48" N - 76° 30' 58" W; thence 217° (M) 1200 yards to a point on shore 35° 12' 20" N - 76° 31' 16" W; thence 284° (M) 740 yards to a point on shore 35° 12' 26" N - 76° 31' 46" W; thence following the shoreline to a point 35° 12' 36" N - 76° 32' 01" W; thence 051° (M) 600 yards to a point 35° 12' 52" N - 76° 31' 45" W; thence parallel with the shoreline no more than 600 yards from shore to a point 35° 13' 11" N - 76° 32' 07" W; thence 038° (M) to a point 600 yards from the north shore 35° 13' 39" N - 76° 31' 54" W; thence parallel with the shoreline no more than 600 yards from shore to a point 35° 13' 09" N - 76° 30' 48" W; thence 009° (M) 600 yards to a point on shore 35° 13' 26" N - 76° 30' 47" W; thence following the shoreline to the beginning point.

(D) ~~(K)~~ In an area bound by a line beginning at Boar Point 35° 12' 07" N - 76° 31' 04" W running 106° (M) 2000 yards to Green Flasher No. 5; thence 200° (M) 2200 yards to a point 35° 10' 56" N - 76° 30' 10" W; thence 282° (M) 2350 yards to Bay Point 35° 11' 02" N - 76° 31' 35" W; thence following the shoreline to the beginning point.

(2) (S) In Pamlico River west of a line from a point on Pamlico Point 35° 18' 42" N - 76° 28' 58" W running 009° (M) through Daymarker No. 1 and Willow Point Shoal Beacon to a point on Willow Point 35° 22' 23" N - 76° 28' 48" W pots may be used in the following areas:

(A) In that area bound by a line beginning at a point on the line from Pamlico Point to Willow Point 35° 19' 24" N - 76° 28' 56" W running westerly parallel to the shoreline at a distance of no more than 1000 yards to Green Flasher No. 1 at the mouth of Goose Creek; thence 248° (M) parallel to the ICWW to a point off Fulford Point 35° 19' 59" N - 76° 36' 41" W; thence 171° (M) to a point on Fulford Point 35° 19' 41" N - 76° 36' 34" W.

(B) All coastal waters and tributaries of Oyster Creek, James Creek, Middle Prong and Clark Creek.

(C) All coastal waters of Goose Creek:

(i) In that area bound by a line beginning at a point on Reed Hammock 35° 20' 24" N - 76° 36' 51" W running 171° (M) 300 yards to a point 35° 20' 16" N - 76° 36' 48" W; thence parallel with the shoreline no more than 300 yards from shore to a point 35° 20' 09" N - 76° 37' 10" W; thence 302° (M) 300 yards to a point on

shore 35° 20' 13" N - 76° 37' 19" W.

(ii) In that area bound by a line beginning at a point on shore 35° 19' 58" N - 76° 37' 33" W; running 291° (M) 300 yards to a point 35° 19' 57" N - 76° 37' 21" W; thence parallel to the shoreline no more than 300 yards from shore to a point 35° 18' 16" N - 76° 37' 16" W; thence 292° (M) to a point on the north shore of Snode Creek 35° 18' 15" N - 76° 37' 27" W.

(iii) In that area bound by a line beginning at a point at the mouth of Goose Creek 35° 19' 59" N - 76° 36' 41" W; running 348° (M) to Green Daymarker No. 5; thence south parallel to the shoreline no more than 300 yards from shore to a point 35° 18' 12" N - 76° 37' 07" W; thence 112° (M) to Store Point 35° 18' 09" N - 76° 36' 57" W.

(iv) Between the line from Store Point to Snode Creek and a line beginning at a point on Long Neck Point running 264° (M) through Beacon No. 15 to Huskie Point from the shoreline to no more than 150 yards from shore.

(v) All coastal waters southeast of the line from Long Neck Point through Beacon No. 15 to Huskie Point.

(vi) Campbell Creek - west of a line from a point on Huskie Point 35° 17' 00" N - 76° 37' 06" W running 004° (M) to Pasture Point 35° 17' 20" N - 76° 37' 08" W, to the Inland-Commercial line.

(D) All coastal waters bound by a line beginning on Reed Hammock 35° 20' 24" N - 76° 36' 51" W running 171° (M) to a point 35° 20' 16" N - 76° 36' 47" W; thence 100° (M) 800 yards to Red Daymarker No. 4; thence 322° (M) 1200 yards to a point 35° 20' 40" N - 76° 36' 48" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point in Bond Creek 35° 20' 40" N - 76° 41' 37" W; thence 199° (M) to a point on the south shore of Muddy Creek 35° 20' 18" N - 76° 41' 34" W, including all waters of Muddy Creek up to the Inland-Coastal boundary line.

(E) Along the west shore of Bond Creek from Fork Point to the Coastal-Inland boundary line from the shoreline to no more than 50 yards from shore.

(F) All coastal waters of South Creek upstream of a line beginning at a point on Fork Point 35° 20' 45" N - 76° 41' 47" W running 017° (M) to a point on Hickory Point 35° 21' 44" N - 76° 41' 36" W.

(G) In that area bound by a line beginning at a point at the six foot depth contour south of

- Hickory Point 35° 21' 33" N - 76° 41' 39" W; thence easterly following the six foot depth contour to a point off the east end of Indian Island 35° 21' 42" N - 76° 38' 04" W; thence 270° (M) to a point on the east end of Indian Island 35° 21' 38" N - 76° 38' 36" W; thence following the shoreline of Indian Island to a point on the west end 35° 21' 37" N - 76° 39' 40" W; thence 293° (M) toward Daymarker No. 1 to a point at the six foot depth contour 35° 21' 46" N - 76° 40' 16" W; thence following the six foot depth contour in a westerly direction to a point off Long Point 35° 22' 42" N - 76° 42' 44" W; thence 233° (M) to a point on shore 35° 22' 24" N - 76° 43' 05" W.
- (H) Beginning at a point on shore near Long Point 35° 22' 29" N - 76° 43' 25" W, running 001° (M) to a point 300 yards offshore 35° 22' 39" N - 76° 43' 26" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35° 22' 39" N - 76° 43' 59" W; thence 209° (M) to a point on shore 35° 22' 30" N - 76° 44' 03" W.
- (I) Beginning at a point on shore 35° 22' 30" N - 76° 44' 27" W, running 355° (M) to a point offshore 35° 22' 40" N - 76° 44' 31" W; thence westerly parallel to the shoreline at a distance of 300 yards to a point 35° 22' 53" N - 76° 45' 00" W; thence running 251° (M) to a point on shore 35° 22' 46" N - 76° 45' 14" W.
- (J) Beginning at a point on shore 35° 22' 54" N - 76° 45' 43" W; running 003° (M) to a point offshore 35° 23' 03" N - 76° 45' 43" W; thence westerly parallel to the shoreline at a distance of 300 yards to the intersection of a line beginning on the north shore at Gum Point 35° 25' 09" N - 76° 45' 33" W; running 210° (M) to a point on the south shore 35° 23' 28" N - 76° 46' 26" W.
- (K) All coastal waters west of a line beginning on the north shore at Gum Point 35° 25' 09" N - 76° 45' 33" W running 210° (M) to a point on the south shore 35° 23' 28" N - 76° 46' 26" W.
- (L) On the north side of Pamlico River bound by a line beginning at the intersection of the line from Gum Point to the south shore 500 yards from shore 35° 24' 55" N - 76° 45' 39" W running easterly parallel to the shoreline at a distance of 500 yards to a point at the six foot contour near Adams Point 35° 23' 08" N - 76° 35' 59" W.
- (M) All waters and tributaries of North Creek except the marked navigation channel.
- (N) In that area bound by a line beginning at a point at the six foot contour near Adams Point 35° 23' 08" N - 76° 35' 59" W running westerly following the six foot depth contour to a point off Wades Point 35° 23' 28" N - 76° 34' 09" W.
- (O) Pungo River:
- (i) Bound by a line beginning at Wades Point 35° 23' 16" N - 76° 34' 30" W running 059° (M) to a point at the six foot depth contour, 35° 23' 28" N - 76° 34' 09" W; thence northerly following the six foot depth contour to a point near Beacon No. 3 35° 25' 44" N - 76° 34' 46" W; thence 272° (M) 950 yards to a point on shore 35° 25' 41" N - 76° 35' 22" W.
 - (ii) Bound by a line beginning at a point on shore 35° 25' 50" N - 76° 35' 37" W running 050° (M) 1150 yards to a point at 35° 26' 17" N - 76° 35' 10" W; thence northerly following the six foot depth contour to a point 35° 26' 54" N - 76° 36' 09" W; thence 314° (M) 350 yards to a point on shore 35° 27' 00" N - 76° 36' 20" W.
 - (iii) Bound by a line beginning at a point on shore 35° 27' 14" N - 76° 36' 26" W running 077° (M) 800 yards to a point 35° 27' 23" N - 76° 36' 02" W; thence northerly following the six foot depth contour to a point off Windmill Point 35° 30' 50" N - 76° 38' 09" W; thence 076° (M) to a point 200 yards west of Daymarker No. 3 35° 31' 21" N - 76° 36' 37" W; thence 312° (M) to a point at the "Breakwater" 35° 31' 36" N - 76° 37' 05" W.
 - (iv) All coastal waters bound by a line beginning at a point at the "Breakwater" 200 yards northeast of Beacon No. 6 35° 31' 47" N - 76° 36' 51" W running 132° (M) to a point 200 yards from Daymarker No. 4 35° 31' 31" N - 76° 36' 21" W; thence running 102° (M) to a point 35° 31' 28" N - 76° 35' 59" W; thence running 010° (M) to Beacon No. 1; thence running 045° (M) 700 yards to a point on shore 35° 32' 22" N - 76° 35' 42" W.
 - (v) All coastal waters north and east of a line beginning at a point on shore west of Lower Dowry Creek 35° 32' 25" N - 76° 35' 07" W running 177° (M) 1950 yards to a point 200 yards north of Daymarker No. 11 35° 31' 31" N - 76° 35' 06" W; thence easterly parallel to the marked navigation channel at a distance of 200 yards to a point on the shore northwest of Wilkerson Creek 35° 33' 13" N - 76° 27' 36" W.

- (vi) All coastal waters south of a line beginning on shore south of Wilkerson Creek 35° 33' 02" N - 76° 27' 20" W running westerly parallel to the marked navigation channel at a distance of 200 yards to a point southeast of Daymarker No. 14 35° 31' 05" N - 76° 32' 34" W; thence running 208° (M) to a point on shore 35° 30' 28" N - 76° 32' 47" W.
 - (vii) All coastal waters bound by a line beginning on shore east of Durants Point 35° 30' 29" N - 76° 33' 25" W running 347° (M) to a point southwest of Daymarker No. 12 35° 31' 08" N - 76° 33' 53" W; thence westerly parallel to the marked navigation channel at a distance of 200 yards to a point south of Beacon No. 10 35° 31' 08" N - 76° 35' 35" W; thence running 185° (M) to a point at the six foot depth contour between Beacon No. 8 and the eastern shore of Pungo River 35° 30' 08" N - 76° 35' 28" W; thence following the six foot depth contour to a point 35° 28' 09" N - 76° 33' 43" W; thence 127° (M) to a point on shore 35° 28' 00" N - 76° 33' 25" W; thence 159° (M) to a point at the six foot depth contour 35° 27' 40" N - 76° 33' 12" W including the waters of Slades Creek and its tributaries; thence 209° (M) to a point on shore 35° 27' 22" N - 76° 33' 21" W; thence 272° (M) to a point at the six foot depth contour 35° 27' 18" N - 76° 33' 53" W; thence southerly following the six foot depth contour to a point south of Sandy Point 35° 26' 35" N - 76° 33' 50" W; thence 087° (M) to a point on shore 35° 26' 38" N - 76° 33' 34" W.
 - (viii) In that area bound by a line beginning at a point on shore 35° 26' 20" N - 76° 33' 18" W running 176° (M) to a point at the six foot depth contour 35° 26' 05" N - 76° 33' 13" W; thence southerly following the six foot depth contour throughout Fortescue Creek to a point off Fortescue Creek 35° 25' 44" N - 76° 32' 09" W; thence 145° (M) to a point on shore 35° 25' 36" N - 76° 32' 01" W.
 - (ix) In that area bound by a line beginning at a point on shore 35° 25' 20" N - 76° 32' 01" W running 258° (M) to a point at the six foot depth contour 35° 25' 17" N - 76° 32' 18" W; thence following the six foot depth contour to the intersection of the line from a point 500 yards west of Currituck Point 35° 24' 30" N - 76° 32' 42" W; thence southeasterly parallel to the shoreline and including Abel Bay at a distance of 500 yards to a point at the intersection of the line from Pamlico Point to Willow Point 35° 22' 09" N - 76° 28' 48" W.
- (3) (6) In Bay River west of a line beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 09" W running 022° (M) to a point on Bay Point 35° 11' 02" N - 76° 31' 34" W, pots may be used in the following areas:
 - (A) In that area beginning at a point on Maw Point 35° 09' 02" N - 76° 32' 09" W; running 018° (M) to Green Daymarker No. 1; thence 223° (M) to a point on shore in Fisherman Bay 35° 09' 18" N - 76° 32' 23" W.
 - (B) In Fisherman Bay bound by a line beginning at a point on the shore west of Maw Point 35° 09' 18" N - 76° 33' 02" W; thence 351° (M) 3200 yards to lighted Beacon No. 3 in Bay River; thence 230° (M) 1200 yards to a point on the shore 35° 10' 24" N - 76° 34' 00" W.
 - (C) In that area bound by a line beginning at a point on the east shore at the mouth of Bonners Bay 35° 10' 05" N - 76° 35' 18" W; thence 306° (M) 300 yards to a point in Bay River, 35° 10' 10" N - 76° 35' 30" W; thence parallel to the shoreline no more than 300 yards from shore to a point in Bay River 35° 10' 40" N - 76° 34' 42" W; thence 188° (M) to a point on shore 35° 10' 27" N - 76° 34' 42" W.
 - (D) In Bonner Bay bound by a line beginning at a point on the east shore 35° 10' 05" N - 76° 35' 18" W running 306° (M) 200 yards to a point 35° 10' 09" N - 76° 35' 25" W; thence parallel to the shoreline no more than 200 yards offshore to a point 35° 09' 16" N - 76° 35' 18" W; thence 097° (M) 200 yards to a point on shore 35° 09' 16" N - 76° 35' 13" W.
 - (E) In Bonner Bay, Spring Creek and Long Creek south of a line beginning at a point on the east shore 35° 09' 16" N - 76° 35' 13" W running 274° (M) to a point on the west shore 35° 09' 14" N - 76° 35' 43" W.
 - (F) In Bonner Bay bound by a line beginning at a point on the west shore 35° 09' 14" N - 76° 35' 44" W running 094° (M) 100 yards to a point 35° 09' 13" N - 76° 35' 39" W; thence parallel to the shoreline no more than 100 yards offshore to a point in Riggs Creek 35° 09' 15" N - 76° 36' 08" W; thence 142° (M) to a point on shore 35° 09' 13" N - 76° 36' 08" W.
 - (G) In that area bound by a line beginning on the south shore of Bay River west of Bell Point 35° 09' 40" N - 76° 40' 00" W, running 314°

- (M) to a point 200 yards offshore 35° 09' 43" N - 76° 40' 06" W; thence no more than 200 yards from the shoreline to a point 35° 09' 53" N - 76° 36' 45" W; thence 102° (M) to a point 35° 09' 50" N - 76° 35' 54" W; thence 181° (M) to a point 35° 09' 36" N - 76° 35' 51" W; thence 237° (M) to a point in Riggs Creek 35° 09' 18" N - 76° 36' 12" W; thence 322° (M) to a point on shore at the mouth of Riggs Creek 35° 09' 21" N - 76° 36' 18" W.
- (H) In that area on the south side of Bay River bound by a line beginning at a point on shore at the confluence of Bay River and Trent Creek 35° 08' 27" N - 76° 43' 12" W running 016° (M) 150 yards to a point 35° 08' 31" N - 76° 43' 11" W; thence no more than 150 yards from shore to a point 35° 08' 57" N - 76° 40' 19" W; thence 116° (M) to a point on shore at Moores Creek 35° 08' 57" N - 76° 40' 14" W.
- (I) In Bay River and Trent Creek west of a line beginning at a point on the south shore 35° 08' 27" N - 76° 43' 12" W running 016° (M) to a point on the north shore 35° 08' 41" N - 76° 43' 09" W.
- (J) In that area on the north shore of Bay River bound by a line beginning at a point west of Vandemere Creek 35° 10' 53" N - 76° 39' 42" W running 135° (M) 150 yards to a point 35° 10' 52" N - 76° 39' 39" W; thence no more than 150 yards from shore to a point at the confluence of Bay River and Trent Creek 35° 08' 37" N - 76° 43' 10" W; thence to a point on the north shore 35° 08' 39" N - 76° 43' 09" W.
- (K) In Vandemere Creek northeast of a line beginning at a point on the east shore 35° 11' 04" N - 76° 39' 22" W running 315° (M) to a point on the west shore 35° 11' 12" N - 76° 39' 36" W.
- (L) In that area bound by a line beginning at a point at the mouth of Vandemere Creek 35° 11' 04" N - 76° 39' 22" W, running 216° (M) 200 yards to a point in Bay River 35° 10' 58" N - 76° 39' 25" W; thence parallel to the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4 35° 10' 40" N - 76° 36' 38" W; thence 344° (M) 200 yards to a point on shore 35° 10' 45" N - 76° 36' 42" W.
- (M) In that area bound by a line beginning at a point on Sanders Point 35° 11' 19" N - 76° 35' 54" W; running 067° (M) 200 yards to a point 35° 11' 23" N - 76° 35' 47" W; thence following the shoreline no more than 200 yards from shore to a point in Bay River northwest of Beacon No. 4 35° 10' 40" N - 76° 36' 38" W; thence 344° (M) 200 yards to a point on the shore 35° 10' 45" N - 76° 36' 42" W.
- (N) In that area beginning at a point on shore 35° 11' 53" N - 76° 35' 54" W of a line running 170° (M) to a point 35° 11' 40" N - 76° 35' 51" W; thence parallel to the shoreline no more than 500 yards from shore to a point 35° 11' 57" N - 76° 35' 05" W; thence running 344° (M) to a point on shore at the mouth of Gales Creek 35° 12' 10" N - 76° 35' 12" W.
- (O) In that area bound by a line beginning at a point on shore at the mouth of Gale Creek 35° 12' 08" N - 76° 34' 52" W, running 278° (M) 200 yards to a point in Bay River 35° 12' 08" N - 76° 35' 02" W; thence running parallel to the shoreline at a distance of 200 yards to a point in Bay River 35° 11' 32" N - 76° 33' 24" W; thence running 352° (M) 200 yards to a point on shore at Dump Creek 35° 11' 39" N - 76° 33' 25" W.
- (P) In Gale Creek except the Intracoastal Waterway north of a line beginning at a point on the west shore 35° 12' 08" N - 76° 35' 12" W running 098° (M) to a point on the west shore 35° 12' 08" N - 76° 34' 52" W.
- (Q) In an area bound by a line beginning at a point on the eastern shore at the mouth of Rockhole Bay 35° 11' 06" N - 76° 32' 11" W; thence 180° (M) 600 yards to a point in Bay River 35° 10' 49" N - 76° 32' 09" W; thence east with the five foot curve 1100 yards to a point 35° 10' 36" N - 76° 31' 30" W; thence 000° (M) 850 yards to a point on Bay Point 35° 11' 02" N - 76° 31' 34" W.
- (4) (7) In the Neuse River and West Bay Area south and west of a line beginning at a point on ~~Maw Point 35° 09' 02" N - 76° 32' 09" W, running 137° (M) through the Maw Point Shoal Day Marker No. 2 and through the Neuse River Entrance Light to a point at the mouth of West Bay 35° 02' 09" N - 76° 21' 53" W northeast of Rattan Point 35° 03' 45" N - 76° 28' 32" W, running 341° (M) to a point on Maw Point 35° 09' 02" N - 76° 32' 09" W~~, pots may be set in the following areas:
- (A) All coastal fishing waters northwest of a line beginning at a point at the mouth of Slocum Creek 34° 57' 02" N - 76° 53' 42" W, running 029° (M) to a point at the mouth of Beards Creek 35° 00' 08" N - 76° 52' 13" W. Pots may also be set in coastal fishing waters of Goose Bay and Upper Broad Creek.
- (B) In that area bound by a line beginning at a point on the north shore at Mill Creek 34° 59' 34" N - 76° 51' 06" W; thence running 223° (M) approximately 300 yards into the river to

- a point 34° 59' 25" N - 76° 51' 14" W; thence along the six foot depth curve southeast to a point at the rock jetty 34° 58' 06" N - 76° 49' 14" W; thence 016° (M) approximately 300 yards to a point on the shore 34° 58' 17" N - 76° 49' 12" W.
- (C) In that area bound by a line beginning at a point on the north shore approximately 500 yards west of Pierson Point 34° 58' 32" N - 76° 46' 38" W; thence running 171° (M) approximately 300 yards into the river to a point 34° 58' 24" N - 76° 46' 34" W; thence east and northeast along the six foot curve to a point in the river 34° 58' 47" N - 76° 45' 39" W; thence 330° (M) approximately 700 yards to a point on the shore 50 yards west of an existing pier 34° 59' 04" N - 76° 45' 54" W.
- (D) In that area bound by a line beginning at a point on the north shore east of Dawson Creek Bridge 34° 59' 34" N - 76° 45' 12" W; thence running 244° (M) approximately 500 yards to Day Marker No. 4 (entrance to Dawson Creek Channel); thence running east 117° (M) to a point 34° 59' 22" N - 76° 45' 19" W; thence east and northeast along the six foot curve to a point 50 yards west of Day Marker No. 3 (channel to Oriental) 35° 01' 02" N - 76° 41' 51" W; thence 303° (M) approximately 600 yards to a point on the eastern tip of Windmill Point 35° 01' 10" N - 76° 42' 08" W.
- (E) In Greens Creek (Oriental) west of a line at the confluence of Greens and Kershaw Creeks beginning at a point on the south shore 35° 01' 28" N - 76° 42' 55" W running 005° (M) to a point on the north shore 35° 01' 38" N - 76° 42' 54" W, no more than 75 yards from the shoreline east of this line to the Highway 55 bridge.
- (F) In that area bound by a line beginning at a point on Whittaker Point 35° 01' 37" N - 76° 40' 56" W; thence running 192° (M) approximately 500 yards to a point in the river 35° 01' 23" N - 76° 40' 57" W; thence along the six foot depth curve northeast to a point in the river off Orchard Creek 35° 03' 18" N - 76° 37' 53" W; thence 280° (M) approximately 900 yards to a point on the eastern tip of Cackle Point 35° 03' 20" N - 76° 38' 27" W.
- (G) In that area bound by a line beginning at a point on the north shore near the mouth of Orchard Creek 35° 03' 38" N - 76° 37' 54" W running 177° (M) approximately 400 yards to a point 35° 03' 27" N - 76° 37' 54" W; thence along the six foot depth curve to a point eastward; thence 174° (M) 600 yards to a point on the north shore 35° 03' 56" N - 76° 36' 42" W.
- (H) In that area bound by a line beginning at a point on the north shore approximately 400 yards south of Gum Thicket Creek 35° 04' 12" N - 76° 36' 11" W; thence running 132° (M) approximately 600 yards to a point 35° 03' 55" N - 76° 35' 48" W; thence along the six foot depth curve eastward to a point 35° 04' 10" N - 76° 34' 37" W; thence 304° (M) to a point on the shore 400 yards north of Gum Thicket Creek 35° 04' 38" N - 76° 35' 42" W.
- (I) In Lower Broad Creek west of a line running 188° (M) through Red Day Marker No. 4. No more than 150 yards from shore between a line running 188° (M) through Red Day Marker No. 4 and a line running 228° (M) through Green Marker No. 3. Pots may not be set in Burton Creek.
- (J) Piney Point Shoal Area, in that area bound by a line beginning at a point on the north side of a creek (locally known as Wadin or Persimmon Creek) 35° 07' 17" N - 76° 33' 26" W running 115° (M) approximately 300 yards to a point near the six foot depth curve 35° 07' 15" N - 76° 33' 16" W; thence south and southeast along the six foot depth curve to a point east of the old lighthouse 35° 05' 17" N - 76° 32' 42" W; thence 288° (M) through the old lighthouse to a point on shore north of Red Day Marker No. 2 at the mouth of Broad Creek 35° 05' 42" N - 76° 35' 18" W.
- (K) In that area bound by a line beginning at a point on the south shore of Maw Bay 35° 08' 32" N - 76° 32' 38" W; thence running 114° (M) to Maw Point Shoal Day Marker No. 2; thence 317° (M) to Maw Point 35° 08' 55" N - 76° 32' 11" W.
- (L) In that area east of Slocum Creek bound by a line beginning at a point 34° 57' 02" N - 76° 53' 42" W; thence running 029° (M) approximately 1100 yards to a point 34° 57' 32" N - 76° 53' 28" W; thence along the six foot curve to a point 34° 56' 34" N - 76° 49' 38" W; thence 176° (M) approximately 300 yards to a point 34° 56' 26" N - 76° 49' 35" W.
- (M) In that area bound by a line beginning at a point 34° 56' 22" N - 76° 49' 05" W, running 057° (M) approximately 1100 yards to Day Marker "2" off Cherry Point; thence 097° (M) approximately 200 yards to a point 34° 56' 42" N - 76° 48' 27" W; thence along the six foot curve to a point 34° 55' 10" N - 76° 45' 40" W; thence 187° (M) approximately 400 yards to a point on Temple Point 34° 54' 58" N - 76° 45' 40" W.

- (N) In that area southeast of a line beginning at a point at the mouth of Clubfoot Creek 34° 55' 20" N - 76° 45' 09" W running 076° (M) to a point on shore 34° 55' 37" N - 76° 44' 23" W.
- (O) In Clubfoot Creek south of a line beginning at a point on the east shore 34° 54' 30" N - 76° 45' 26" W, running 284° (M) to a point on the west shore 34° 54' 33" N - 76° 45' 43" W. Pots may be set 50 yards from shore north of this line.
- (P) In that area bound by a line beginning at the western tip of Great Island 34° 55' 47" N - 76° 44' 50" W; thence running 275° (M) approximately 500 yards to a point 34° 55' 46" N - 76° 45' 07" W; thence 029° (M) approximately 1400 yards to a point 34° 56' 24" N - 76° 44' 48" W; thence 120° (M) to a point 34° 56' 06" N - 76° 43' 59" W; thence 232° (M) to a point on Great Island 34° 55' 50" N - 76° 44' 17" W.
- (Q) In that area bound by a line beginning at a point west of Long Creek 34° 55' 38" N - 76° 44' 18" W running 064° (M) to a point 34° 55' 57" N - 76° 43' 43" W; thence 138° (M) to a point on shore at the mouth of Great Neck Creek 34° 55' 50" N - 76° 43' 25" W.
- (R) In that area bound by a line beginning at a point at the mouth of Great Neck Creek 34° 55' 50" N - 76° 43' 25" W, running 318° (M) 750 yards to a point 34° 56' 04" N - 76° 43' 47" W; thence following the shoreline no more than 750 yards from shore to a point 34° 56' 50" N - 76° 43' 11" W; thence 116° (M) 750 yards to a point on shore at Courts Creek 34° 56' 42" N - 76° 42' 46" W.
- (S) In that area bound by a line beginning at a point on Courts Creek 34° 56' 42" N - 76° 42' 46" W, running 296° (M) 1000 yards to a point 34° 56' 52" N - 76° 43' 20" W; thence parallel with the shoreline no more than 1000 yards to a point 34° 57' 53" N - 76° 41' 59" W; thence 190° (M) 1000 yards to a point on shore 34° 57' 24" N - 76° 42' 00" W.
- (T) In that area bound by a line beginning at a point on shore, 34° 57' 24" N - 76° 42' 00" W, running 010° (M) 500 yards to a point 34° 57' 38" N - 76° 42' 00" W; thence running parallel to the shoreline no more than 500 yards from shore to a point 34° 57' 33" N - 76° 41' 00" W; thence 179° (M) to a point 34° 57' 23" N - 76° 40' 58" W; thence 260° (M) to a point on shore at the mouth of Adams Creek 34° 57' 22" N - 76° 41' 10" W.
- (U) In that area bound by a line beginning at a point on the northeast side of Adams Creek 34° 57' 30" N - 76° 40' 36" W; thence 278° (M) 225 yards offshore to a point 34° 57' 30" N - 76° 40' 45" W; thence 359° (M) to a point off Winthrop Point 34° 58' 26" N - 76° 40' 56" W; thence running 056° (M) to a point off Cedar Point 34° 59' 07" N - 76° 40' 04" W; thence 140° (M) to the shoreline on Cedar Point 34° 58' 50" N - 76° 39' 41" W.
- (V) In that area bound by a line beginning at a point on Cedar Point 34° 58' 50" N - 76° 39' 41" W, running 320° (M) 750 yards to a point 34° 59' 05" N - 76° 40' 01" W; thence parallel to the shoreline no more than 750 yards from shore to a point 34° 59' 16" N - 76° 39' 31" W; thence 167° (M) to a point on shore 34° 58' 56" N - 76° 39' 21" W.
- (W) In that area bound by a line beginning at a point on shore 34° 58' 56" N - 76° 39' 21" W running 347° (M) to a point 34° 59' 03" N - 76° 39' 24" W; thence parallel to the shoreline no more than 200 yards from shore to a point 34° 59' 08" N - 76° 38' 47" W; thence 184° (M) to a point on shore 34° 59' 01" N - 76° 35' 25" W.
- (X) In that area bound by a line beginning at a point west of Garbacon Creek 34° 59' 01" N - 76° 38' 43" W, running 004° (M) 750 yards to a point 34° 59' 23" N - 76° 38' 46" W; thence parallel with the shoreline no more than 750 yards from shore to a point off Browns Creek 35° 00' 20" N - 76° 33' 45" W; thence 172° (M) to the shoreline on the west side of Browns Creek 34° 59' 57" N - 76° 33' 35" W.
- (Y) In that area bound by a line beginning at a point on shore at the mouth of Browns Creek 34° 59' 55" N - 76° 33' 29" W, running 352° (M) 750 yards to a point on 35° 00' 22" N - 76° 33' 34" W; thence parallel to the shoreline no more than 750 yards from shore to a point 35° 01' 45" N - 76° 29' 51" W; thence 162° (M) 750 yards to a point on shore north of Cedar Bay Point 35° 01' 22" N - 76° 29' 34" W.
- (Z) ~~(AA)~~ In Adams Creek:
- (i) Between a line running 080° (M) through Red Flasher No. 4 at the mouth of Adams Creek and a line beginning at a point on the south shore of Cedar Creek 34° 55' 52" N - 76° 38' 49" W, running 297° (M) to a point on the west shore of Adams Creek 34° 56' 03" N - 76° 39' 27" W, no more than 200 yards from shore.
 - (ii) Between a line beginning at a point at the mouth of Cedar Creek 34° 55' 52" N - 76° 38' 49" W; running 297° (M) to a point on the west shore of Adams Creek 34° 56' 03" N - 76° 39' 27" W, and a

line beginning at a point on the east shore 34° 54' 55" N - 76° 39' 36" W; running 280° (M) to a point on the west shore 34° 54' 55" N - 76° 40' 01" W; no more than 300 yards from the west shore and 200 yards from the east shore.

- (iii) South of a line beginning at a point on the east shore 34° 54' 55" N - 76° 39' 36" W, running 280° (M) to a point on the west shore 34° 54' 55" N - 76° 40' 01" W, except in the marked navigation channel.

(AA) (BB) In South River:

- (i) Southeast of a line beginning at a point on the southwest shore 34° 58' 35" N - 76° 35' 25" W, running 049° (M) through Red Flasher No. 2 to a point on the northeast shore 34° 59' 07" N - 76° 34' 52" W, no more than 200 yards from the shoreline.
- (ii) That area bound by a line beginning at a point on the southwest shore 34° 58' 35" N - 76° 35' 25" W, running 049° (M) to Red Flasher No. 2; thence running 207° (M) to a point north of Hardy Creek 34° 58' 13" N - 76° 35' 22" W; thence following the shoreline to the point of beginning.

(BB) (CC) In Turnagain Bay:

- (i) Between a line running 077° (M) through Green Flasher No. 1 and a line beginning at a point on the east shore 34° 59' 04" N - 76° 29' 01" W; running 276° (M) to a point on the west shore 34° 59' 03" N - 76° 29' 28" W, no more than 300 yards on the east shore and 100 yards on the west shore.
- (ii) Between a line beginning at a point on the east shore 34° 59' 04" N - 76° 29' 01" W, running 276° (M) to a point on the west shore 34° 59' 03" N - 76° 29' 28" W, and a line beginning at a point on the east shore 34° 57' 56" N - 76° 29' 25" W, running 275° (M) to a point on the west shore 34° 57' 58" N - 76° 29' 44" W, no more than 150 yards from shore.

- (5) (42) Designated primary nursery areas in all coastal fishing waters which are listed in 15A NCAC 3R .0003, except Burton Creek off Lower Broad Creek in Pamlico County.

(d) It is unlawful to use pots from June 15 through September 30 in the areas described in Subparagraphs (1) through (2) of this Paragraph except in accordance with 15A NCAC 3J .0301(a)(3)(B):

- (1) (5) In Bay River, beginning at a point on shore at Moore Creek 35° 08' 51" N - 76° 40' 14" W; running 296° (M) to a point 35° 08' 59" N - 76° 50' 19" W; thence no more than 150

yards from shore to a point 35° 09' 43" N - 76° 40' 06" W; thence running 134° (M) to a point on shore west of Bell Point 35° 09' 40" N - 76° 40' 00" W;

(2) (6) In Neuse River:

- (A) Beginning at a point on shore north of Swan Creek 35° 07' 17" N - 76° 33' 26" W running 115° (M) to a point near the six foot depth contour 35° 07' 15" N - 76° 33' 16" W; thence running 074° (M) to Beacon No. 2 at Maw Point Shoal; thence running 294° (M) to a point on shore 35° 08' 30" N - 76° 32' 36" W; thence following the shoreline to the beginning point 35° 07' 17" N - 76° 33' 26" W;
- (B) Beginning at a point on shore north of Gum Thicket Creek 36° 35' 04' 40" N - 76° 35' 38" W; thence running 129° (M) to a point 35° 04' 12" N - 76° 34' 37" W; thence running 355° (M) to Beacon No. 1 in Broad Creek; thence running the six foot contour line to Green Marker No. 3;
- (C) Beginning at a point on the eastern tip of Cockle Point 35° 03' 20" N - 76° 38' 27" W; thence running 100° (M) to a point 35° 03' 18" N - 76° 37' 53" W; thence running 005° (M) to a point on shore 35° 03' 38" N - 76° 37' 54" W; thence following the primary nursery area line to the beginning point 35° 03' 20" N - 76° 38' 27" W;
- (D) Beginning at a point on shore on the eastern side of the MBYB channel 34° 58' 16" N - 76° 49' 05" W running 186° (M) to a point on the six foot depth contour 34° 58' 07" N - 76° 49' 05" W; thence following the six foot depth contour to a point 34° 58' 24" N - 76° 46' 34" W; thence running 351° (M) to a point on shore 34° 58' 32" N - 76° 46' 38" W;
- (E) Beginning at a point on shore at Beards Creek 35° 00' 08" N - 76° 52' 13" W; thence running 209° (M) to a point 34° 59' 52" N - 76° 52' 20" W; thence running along the six foot depth contour to a point 34° 59' 25" N - 76° 51' 14" W; thence running 043° (M) to a point on shore at Mill Creek 34° 59' 34" N - 76° 51' 06" W.

Statutory Authority G.S. 113-134; 113-182; 113-221; 143B-289.4.

.0011 PURSE SEINES PROHIBITED

(a) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from the Atlantic Ocean within an area bounded by a line extending from Bald Head Lighthouse bearing 242° (M) to Cape Fear River ship channel buoy "7", then bearing 320° (M) to the foot of the Yaupon Beach Fishing Pier on Oak Island, then following the shoreline eastward to a point near Fort Caswell (33° 53'

13° N - 78° 01' 11" W), then running 138° (M) to the Bald Head Lighthouse.

(b) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from the Atlantic Ocean from May 1 through September 30 in that area south of a line beginning at a point onshore at the northern boundary of Dare County 36° 13' 47" N - 75° 46' 24" W; running 100° (M) 1.5 nautical miles to a point offshore 36° 13' 47" N - 75° 44' 36" W; thence west of a line running 165° (M) 30 nautical miles to a point offshore 36° 46' 20" N - 75° 29' 48" W; thence north of a line running 280° (M) 1.5 nautical miles to a point on shore at the rock jetty south of Oregon Inlet 35° 46' 20" N - 75° 31' 30" W 28" W; and north of a line beginning at a point onshore at the northern town limits of Southern Shores 36° 09' 03" N - 75° 44' 06" W; running 100° (M) 1.5 nautical miles to a point offshore 36° 09' 03" N - 75° 42' 13" W; and in that area south of a line beginning at a point at the southern limits of Kitty Hawk 36° 03' 42" N - 75° 41' 12" W; running 100° (M) 1.5 nautical miles to a point offshore 36° 03' 42" N - 75° 39' 21" W; and north of a line beginning at a point onshore at the rock jetty south of Oregon Inlet 35° 46' 20" N - 75° 31' 30" W; running 100° 1.5 nautical miles to a point offshore 35° 46' 20" N - 75° 29' 36" W.

(c) It is unlawful to take menhaden or Atlantic thread herring by the use of a purse seine from the Atlantic Ocean from October 1 through December 31 in that area south of a line beginning at a point onshore at the northern boundary of Dare County 36° 13' 47" N - 75° 46' 24" W; running 100° (M) .5 nautical miles to a point offshore 36° 13' 47" N - 75° 45' 45" W; thence west of a line running 165° (M) 30 nautical miles to a point offshore 36° 46' 20" N - 75° 30' 54" W; thence north of a line running 280° (M) .5 nautical miles to a point on shore at the rock jetty south of Oregon Inlet 35° 46' 20" N - 75° 31' 30" W and north of a line beginning at a point onshore at the northern town limits of Southern Shores 36° 09' 03" N - 75° 43' 30" W; running 100° (M) .5 nautical miles to a point offshore 36° 09' 03" N - 75° 40' 34" W; and in that area south of a line beginning at a point at the southern limits of Kitty Hawk 36° 03' 42" N - 75° 41' 12" W; running 100° (M) .5 nautical miles to a point offshore 36° 03' 42" N - 75° 40' 34" W; and north of a line beginning at a point onshore at the rock jetty south of Oregon Inlet 35° 46' 20" N - 75° 31' 30" W; running 100° .5 nautical miles to a point offshore 35° 46' 20" N - 75° 30' 49" W.

Statutory Authority G.S. 113-134; 113-182; 143B-289.4.

TITLE 21 - OCCUPATIONAL LICENSING BOARDS

CHAPTER 14 - BOARD OF COSMETIC ART EXAMINERS

Notice is hereby given in accordance with G.S. 150B-21.2 that the N.C. State Board of Cosmetic Art

Examiners intends to amend rules cited as 21 NCAC 14J .0502; 14N .0107 - .0108, .0112 and repeal 14L .0301 - .0302; 14N .0106.

Proposed Effective Date: January 1, 1996.

A Public Hearing will be conducted at 10:00 a.m. on November 6, 1995 at 1110 Navaho Drive, Suite 500, Raleigh, NC 27609.

Reason for Proposed Action:

21 NCAC 14J .0502 - To better clarify the requirements for people who are licensed in other countries.

21 NCAC 14L .0301 - .0302 - No legal authority for reciprocity with teachers.

21 NCAC 14N .0106 - The safety of the public.

21 NCAC 14N .0107 - To eliminate the word "interpreter" in the rule.

21 NCAC 14N .0108 - To give the candidate longer time to get a doctor's statement into the office.

21 NCAC 14N .0112 - To be able to mail a practical grade breakdown to the student instead of the student coming into the State Board office.

Comment Procedures: Records shall be open for 30 days to receive written comments. Comments should be addressed to Dee Williams, NC State Board of Cosmetic Art, 1110 Navaho Dr., Suite 500, Raleigh, NC 27609.

Fiscal Note: These Rules do not affect the expenditures or revenues of local government or state funds.

SUBCHAPTER 14J - COSMETOLOGY CURRICULUM

SECTION .0500 - CREDIT FOR COSMETOLOGY STUDY OUTSIDE OF NORTH CAROLINA

.0502 APPROVAL OF CREDIT FOR COSMETOLOGY INSTRUCTION/ANOTHER COUNTRY

All approval for credit hours of instruction taken in another country shall be reviewed, approved or denied on a case by case basis. Any person who has been trained in the field of cosmetology in a foreign country and desires to be licensed must first demonstrate satisfactory proof of proficiency in the cosmetology skills meeting all the North Carolina requirements. Each applicant must take the State Board examination in the English language.

Statutory Authority G.S. 88-10; 88-13.

SUBCHAPTER 14L - COSMETIC ART TEACHERS

SECTION .0300 - TEACHERS LICENSED IN OTHER STATES

.0301 APPLICANTS LICENSED AS TEACHERS IN OTHER STATES

An individual who is licensed as a teacher in another state may be licensed as either a cosmetology teacher or a manicurist teacher in this State without examination if the individual makes application on a form provided by the Board, shows to the satisfaction of the Board that the individual meets the requirements of Rule .0302 of this Section, and has paid the fees required in Rule .0214 of this Subchapter. The Board will not issue a cosmetology teacher's license under this Rule to anyone who has failed the North Carolina cosmetology teacher's examination within the three years prior to the date of application for licensure in this State, or a manicurist teacher's license to any one who has failed the North Carolina manicurist teacher's examination within the three years prior to the date of application for licensure in this State, and was subsequently licensed in another state.

Statutory Authority G.S. 88-23.

.0302 REQUIREMENTS FOR OBTAINING A TEACHER'S LICENSE IN THIS SECTION

(a) All applicants for any teacher's license under Rule .0301 of this Section shall present evidence to the Board that the applicant:

- (1) currently holds a valid teacher's license in another state, issued by the state agency that licenses teachers in the field of cosmetology art; and
- (2) for a period equivalent to one year of full-time work within the three years prior to the date of application for licensure in this state, has worked as a teacher in a cosmetic art school in that state, or any state other than North Carolina where they were also licensed as a teacher; and
- (3) is not the subject of a disciplinary proceeding or an unresolved complaint; and
- (4) has a high school diploma or a high school graduation equivalency certificate.

If the applicant has ever been subjected to discipline by a licensing agency or had a complaint to a licensing agency resolved against the applicant, the applicant must submit to the Board information about the nature and details of the complaint and the action taken by the licensing agency.

(b) An applicant for a license under Rule .0301 of this Section as a cosmetology teacher shall present evidence to the Board that the applicant:

- (1) has, or has applied to the Board for and is entitled to, a license as a registered cosmetologist in this State;
- (2) has either:
 - (A) practiced cosmetology in a cosmetic art shop for a period equivalent to five years of full-time work; or
 - (B) completed an 800-hour teacher training course in cosmetology approved by the state that issued the applicant's teacher's license and

practiced cosmetology in a cosmetic art shop for a period equivalent to six months of full-time work; and

- (3) has passed a teacher's examination consisting of a practical skills demonstration and The National Written Cosmetology Teacher's Examination given by that state's licensing body.

(c) An applicant for a license under Rule .0301 of this Section as a manicurist teacher shall present evidence to the Board that the applicant:

- (1) has, or has applied to the Board for and is entitled to, a license as a registered manicurist in this State;
- (2) has either:
 - (A) practiced manicuring in a cosmetic art shop for a period equivalent to five years of full-time work; or
 - (B) completed a 320-hour teacher training course in manicuring approved by the state that issued the applicant's teacher's license and practiced manicuring in a cosmetic art shop for a period equivalent to six months of full-time work; and
- (3) has passed a teacher's examination consisting of a practical skills demonstration and The National Written Manicurist Teacher's Examination given by that state's licensing body.

Statutory Authority G.S. 88-23.

SUBCHAPTER 14N - EXAMINATIONS

SECTION .0100 - GENERAL PROVISIONS

.0106 USE OF AN INTERPRETER

(a) A candidate whose native language is not English may apply for permission to bring an interpreter to the examination, if the candidate is unable to speak, read, or write English at a tenth grade level.

(b) The interpreter shall be:

- (1) 18 years old or older, and
- (2) fluent in both English and the candidate's native or other language.

(c) An interpreter shall not:

- (1) be currently or formerly licensed by this state or any state, nor have received or is currently receiving any training, in any branch of cosmetology art;
- (2) be a current or former owner or employee of any beauty establishment;
- (3) be simultaneously a model for any candidate taking the examination.

(d) The application for permission to use an interpreter shall be made on a form provided by the Board.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0107 SPECIAL ARRANGEMENTS FOR DISABLED

(a) If a candidate has a disability which will require special arrangements to take an examination, the candidate shall request such arrangements ~~in~~ with his or her ~~initial~~ application for examination. The request for special arrangements shall be in writing and shall set out in sufficient detail what special arrangements are needed. The Board shall make reasonable accommodations for candidates requesting assistance under this Section, including any assistance required by applicable provisions of the Federal Americans with Disabilities Act.

(b) If reading assistance or an ~~interpreter~~ a reader is required, the application for special arrangements shall also be accompanied by a letter from the candidate's cosmetic art school which documents the assistance the candidate required during classes there. If the candidate is unable to obtain a letter from a cosmetic art school, then the candidate shall submit a letter from a professional qualified to diagnose and document the disability.

(c) In all other cases, the application for special arrangements shall be accompanied by a letter from a professional qualified to diagnose and document the disability.

(d) The candidate shall provide any special equipment or ~~interpreters~~ readers. ~~An interpreter~~ A reader shall be 18 years of age or ~~older~~ older, and ~~meet the requirements of 21 NCAC 14N .0106(e).~~

(e) A reader shall not be:

- (1) currently or formerly licensed by this state or any state, nor have received or is currently receiving any training, in any branch of cosmetic art;
- (2) a current or former owner or employee of any beauty establishment;
- (3) simultaneously a model for any candidate taking the examination.

(f) The application for permission to use a reader shall be made on a form provided by the Board.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4).

.0108 FAILURE TO APPEAR FOR EXAMINATION

(a) If a candidate fails to appear for the scheduled examination, the examination fee shall not be refunded.

(b) Notwithstanding Paragraph (a) of this Rule, the examination fee may be refunded to a candidate who has failed to appear for the examination if verification of good cause for failing to appear is mailed to the Board within ~~seven~~ 15 days of the examination date.

(c) Determination of "good cause" under this Rule is within the Board's discretion.

(d) "Good cause" includes events beyond the control of the candidate that prohibited him or her from attending the examination. Examples of good cause are serious personal illness or accident, and death or serious illness in the immediate family.

(e) Acceptable verification of good cause is any written

communication from a person not related to the candidate that would tend to support the candidate's stated reason for failing to attend the examination. Some examples of acceptable verifications would include a statement from an attending physician, an official accident report or an obituary notice.

(f) The license fee shall be credited to the candidate's account unless candidate notifies the Board in writing that he or she does not wish to re-apply. In that case, the license fee shall be refunded.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21; 88-23; 88-30(4).

.0112 REVIEW OF EXAMINATION

(a) A candidate who has failed the practical section of an examination may upon written request review his or her grading sheets for that section at the Board's office in Raleigh receive a breakdown of the practical examination grades. However, a candidate may not review the theory section of an examination.

(b) A candidate who has passed both sections of an examination at any level may not review his or her examination papers.

(c) In order to review the practical section grading sheets for his or her examination, a candidate shall file a written request with the Board not more than 30 days after the date ~~of notice of the examination results was~~ the practical grade breakdown was mailed. If the request is received by the 10th of the month, the review will be the next month. Once a request is sent to the Board office, the Board will notify the candidate of an appointment time and date. The candidate shall confirm the time and date at least seven days before appointment time or time may be canceled.

(d) The review authorized by Paragraph ~~(a)~~ (c) of this Rule shall be under the supervision of an authorized representative of the Board. No person shall copy a question or answer contained in the examination report or alter an examination paper in any way.

Statutory Authority G.S. 88-10(2); 88-12(2); 88-16; 88-17; 88-21(a)(16); 88-23; 88-30(4); 93B-8.

CHAPTER 68 - NORTH CAROLINA SUBSTANCE ABUSE PROFESSIONAL CERTIFICATION BOARD

Notice is hereby given in accordance with G.S. 150B-21.2 that the North Carolina Substance Abuse Professionals Certification Board intends to adopt rules cited as 21 NCAC 68 .0501 - .0511 and .0601 - .0610.

Temporary: These Rules were filed as temporary adoptions effective October 23, 1995 for a period of 180 days or until the permanent rule becomes effective, whichever is sooner.

Proposed Effective Date: February 1, 1996.

A Public Hearing will be conducted at 10:00 am on December 15, 1995 at Nick's Cuisine, 2699 Ramada Road, Burlington, NC 27216 (See Maitre d' for room designation).

Reason for Proposed Action: To provide for specific ethical guidelines governing conduct of substance abuse professionals and to set out the specific grounds for professional discipline as well as disciplinary procedures that would be utilized to uphold standards in the profession.

Comment Procedures: Any person may submit comments to the Board either orally or in writing at the Public Hearing. All other written comments must be received by the Board no later than the commencement of the Public Hearing. Written comments will be mailed to: Mr. Jim Scarborough, North Carolina Substance Abuse Professionals Certification Board, PO Box 10126, Raleigh, NC 27605.

Fiscal Note: These Rules do not affect the expenditures or revenues of state or local government funds.

SECTION .0100 - RESERVED FOR "GENERAL"

SECTION .0200 - RESERVED FOR "CERTIFICATION"

SECTION .0300 - RESERVED FOR "EXAMINATIONS"

SECTION .0400 - RESERVED FOR "RENEWAL OF CERTIFICATION"

SECTION .0500 - ETHICAL PRINCIPLES OF CONDUCT

.0501 PURPOSE AND SCOPE

(a) The ethical guidelines governing the certified substance abuse professional are established to insure that the highest standards are followed for the professional practice in the alcohol and other drug abuse service delivery system.

(b) The primary goal of this code is to set forth principles to guide the conduct of the substance abuse professional in the profession. Violation of these standards may be deemed malpractice, gross negligence, incompetence, or engaging in conduct that could result in harm or injury to the public.

(c) Ethical principles shall provide a standard for the substance abuse professional in his or her professional roles, relationships and responsibilities. The substance abuse professional is charged to consider all principles that apply to the situation on which ethical judgment is to be exercised and to select a course of action consistent with the spirit as well as the letter of the ethical code.

(d) Upon approval of certification, each applicant shall review the Ethical Standards of the Board and return a signed-statement to the Board agreeing to abide by these

standards.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40.

.0502 NON-DISCRIMINATION

The substance abuse professional should not discriminate against clients or professionals based on race, religion, age, sex, handicaps, national ancestry, sexual orientation or economic condition.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.40.

.0503 COMPETENCE

The substance abuse professional shall recognize that the profession is founded on national standards of competency which promote the best interests of society, of the client and of the profession as a whole. The counselor shall obtain continuing education as a component of professional competency.

- (1) The substance abuse professional shall prevent the practice of substance abuse counseling by unqualified and unauthorized persons.
- (2) The substance abuse professional who is aware of unethical conduct or of unprofessional modes of practice shall report such violations to the appropriate certifying authority.
- (3) The substance abuse professional shall recognize boundaries and limitations of counselor's competencies and not offer services or use techniques outside of these professional competencies.
- (4) The substance abuse professional shall recognize the effect of professional impairment on professional performance and shall be willing to seek appropriate treatment for oneself or for a colleague. The counselor shall support peer assistance programs in this respect.

Statutory Authority G.S. 90-113.30; 90-113.36; 90-113.37; 90-113.39; 90-113.40; 90-113.41; 90-113.43; 90-113.44.

.0504 LEGAL STANDARDS AND MORAL STANDARDS

The substance abuse professional shall uphold the legal and accepted moral codes which pertain to professional conduct.

- (1) The substance abuse professional shall not claim either directly or by implication, professional qualifications or affiliations that the counselor does not possess.
- (2) The substance abuse professional shall not use the affiliation with the North Carolina Substance Abuse Professional Certification Board for purposes that are not consistent with the stated purposes of the Board.
- (3) The substance abuse professional shall not associ-

ate with or permit the counselor's name to be used in connection with any services or products in a way that is incorrect or misleading.

- (4) The substance abuse professional associated with the development or promotion of books or other products offered for commercial sale shall be responsible for ensuring that such books or products are presented in a professional and factual way.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.43; 90-113.44; 90-113.45.

.0505 PUBLIC STATEMENTS

The substance abuse professional shall respect the limits of present knowledge in public statements concerning alcoholism and other forms of drug addiction.

- (1) The substance abuse professional who represents the field of alcoholism counseling to clients, other professionals or to the general public shall report fairly and accurately the appropriate information.
- (2) The substance abuse professional shall acknowledge and document materials and techniques used.
- (3) The substance abuse professional who conducts training in alcoholism or drug abuse counseling skills or techniques shall indicate to the audience the requisite training and qualifications required to properly perform these skills and techniques.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.44.

.0506 PUBLICATION CREDIT

The substance abuse professional shall assign credit to all who have contributed to the published material and for the work upon which the publication is based.

- (1) The substance abuse professional shall recognize joint authorship, major contributions of a professional character, made by several persons to a common project. The author who has made the principle contribution to a publication shall be identified as a first listed.
- (2) The substance abuse professional shall acknowledge in footnotes or an introductory statement minor contribution of a professional character, extensive clerical or similar assistance and other minor contributions.
- (3) The substance abuse professional shall acknowledge, through specific citations, unpublished, as well as published material, that has directly influenced the research or writing.
- (4) The substance abuse professional who compiles and edits for publication the contributions of others shall list oneself as editor, along with the names of those others who have contributed.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.44.

.0507 CLIENT WELFARE

The substance abuse professional shall respect the integrity and protect the welfare of the person or group with whom the counselor is working.

- (1) The substance abuse professional shall define for self and others the nature and direction of loyalties and responsibilities and keep all parties concerned informed of these commitments.
- (2) The substance abuse professional, in the presence of professional conflict shall be concerned primarily with the welfare of the client.
- (3) The substance abuse professional shall terminate a counseling or consulting relationship when it is reasonable clear to the counselor that the client is not benefiting from it.
- (4) The substance abuse professional, in referral cases, shall assume the responsibility for the client's welfare either by termination by mutual agreement and in some cases or in others by the client becoming engaged with another professional. In situations when a client refuses treatment, referral or recommendations, the substance abuse professional shall carefully consider the welfare of the client by weighing the benefits of continued treatment or termination and shall act in the best interest of the client.
- (5) The substance abuse professional who asks a client to reveal personal information from other professionals or allows information to be divulged shall inform the client of the nature of such transactions. The information released or obtained with informed consent shall be used for expressed purposes only.
- (6) The substance abuse professional shall not use a client in a demonstration role in a workshop setting where such participation would foreseeably seriously harm the client.
- (7) The substance abuse professional shall ensure the presence of an appropriate setting for clinical work to protect the client from harm and the counselor and the profession from censure.
- (8) The substance abuse professional shall collaborate with other health care professionals in providing a supportive environment for the client who is receiving prescribed medications.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44.

.0508 CONFIDENTIALITY

The substance abuse professional shall embrace, as a primary obligation, the duty of protecting the privacy of clients and shall not disclose confidential information acquired, in teaching, practice or investigation.

- (1) The substance abuse professional shall inform the client and obtain agreement in areas likely to affect the client's participation including the

recording of an interview, the use of interview material for training purposes and observation of an interview by another person.

- (2) The substance abuse professional shall make provisions for the maintenance of confidentiality and the ultimate disposition of confidential records.
- (3) The substance abuse professional shall reveal information received in confidence only when there is clear and imminent danger to the client or to other persons and then only to the appropriate professional worker or public authorities.
- (4) The substance abuse professional shall discuss the information obtained in clinical or consulting relationships only in appropriate settings and only for professional purposes clearly concerned with the case. Written and oral reports shall present only data germane to the purpose of the evaluation and every effort shall be made to avoid undue invasion of privacy.
- (5) The substance abuse professional shall use clinical and other material in classroom teaching and writing only when the identity of the persons involved is adequately disguised.

Statutory Authority G.S. 90-113.30; 90-113.43; 90-113.44.

.0509 CLIENT RELATIONSHIPS

The substance abuse professional shall inform the prospective client of the important aspects of the potential relationship.

- (1) The substance abuse professional shall inform the client and obtain the client's agreement in areas likely to affect the client's participation including the recording of an interview, the use of interview material for training purposes and in some cases or in others, observation of an interview by another person.
- (2) The substance abuse professional shall inform the designated guardian or responsible person of the circumstances that may influence the relationship, when the client is a minor or incompetent.
- (3) The substance abuse professional shall not enter into a professional relationship with members of one's own family, intimate friends or close associates or others whose welfare might be jeopardized by such a dual relationship.
- (4) The substance abuse professional shall not engage in sexual activity with a client who is receiving services or has an unpaid balance owing to the professional.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.44.

.0510 INTERPROFESSIONAL RELATIONSHIPS

The substance abuse professional shall treat colleagues

with respect, courtesy and fairness and shall afford the same professional courtesy to other professionals.

- (1) The substance abuse professional shall not offer professional services to a client in counseling with another professional except with the knowledge of the other professional or after the termination of the client's relationship with the other professional.
- (2) The substance abuse professional shall cooperate with duly constituted professional ethics committees and promptly supply necessary information unless constrained by the demands of confidentiality.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.44.

.0511 REMUNERATION

The substance abuse professional shall establish financial arrangements in professional practice and in accord with the professional standards that safeguard the best interests of the client, of the counselor and of the profession.

- (1) The substance abuse professional shall consider carefully the ability of the client to meet the financial cost in establishing rates for professional services.
- (2) The substance abuse professional shall not send nor receive any commission or rebate or any other form of remuneration for referral of clients for professional services. The counselor shall not engage in fee splitting.
- (3) The substance abuse professional in clinical or counseling practice shall not use one's relationship with clients to promote personal gain or the profit of an agency or commercial enterprise of any kind.
- (4) The substance abuse professional shall not accept a private fee or any other gift or gratuity for professional work with a person who is entitled to such services through an institution or agency. The policy of a particular agency may make explicit provisions for private work with its clients by members of its staff and in such instances the client must be fully apprised of all policies affecting the client.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.44.

SECTION .0600 - GROUNDS FOR DISCIPLINE AND DISCIPLINARY PROCEDURES

.0601 GROUNDS FOR PROFESSIONAL DISCIPLINE

Violation of these principles shall be deemed grounds for discipline:

- (1) Fraud or Misrepresentation in Procuring or Maintaining Certification.
- (A) Acts such as to practice, attempt to practice, or

- supervise others while representing oneself to be a certified substance abuse counselor or a certified substance abuse prevention consultant without being duly certified;
- (B) False representation of material fact to procure or maintain certification, whether by word or conduct;
- (C) Concealment of requested information contained in the application;
- (D) Attempting to file or filing any false or forged diploma, certificate, affidavit, transcript, identification or qualification;
- (E) Submitting material which is not the work product of the applicant;
- (F) Knowingly assisting another to procure or maintain certification on the basis of fraud; or
- (G) Aid, abet, or assist any uncertified person to practice as a certified substance abuse professional in violation of this code.
- (2) Fraud or Misrepresentation to the Public.
- (A) Knowingly make misleading, deceptive, false, or fraudulent misrepresentations in the practice of the profession; or
- (B) Pursue an illegal practice as set forth in G.S. 90-113.43.
- (3) Exploitation of Client or Recipient Relationships.
- (A) Entering into a professional relationship with any member of one's own family, close associate or any other person whose psychological, physical, or financial welfare an ordinary, reasonable, prudent person could foresee would be jeopardized by such a dual relationship;
- (B) Participating in or soliciting sexual relations with a client or recipient;
- (C) Entering into personal financial arrangements with a client or recipient which make an unjust or improper use of the client or recipient; or
- (D) Using the professional relationship with a client or recipient to promote personal gain or the profit of an agency or commercial enterprise of any kind to benefit the substance abuse professional.
- (4) Illegal Acts or Practices.
- (A) Violation of Federal or State confidentiality statutes;
- (B) Conviction of any controlled substances law, until proof of rehabilitation is established to the Board's satisfaction; or
- (C) Being any accessory to or participating in dishonesty, fraud, misrepresentation or any other illegal act involving a client or recipient.
- (5) Professional Incompetency or Failure to Meet Standards of Practice.
- (A) Failure to follow the standards of skill and competence possessed and applied by professional peers certified in this State acting in the same or similar circumstances;
- (B) Use of drugs or alcoholic beverages to the extent that professional competency is affected, until proof of rehabilitation can be established;
- (C) Refusal to seek treatment for chemical dependency or mental health problems which impair professional performance; or
- (D) Engaging in conduct that an ordinary, reasonable, and prudent person could foresee would result in harm or injury to the public.
- (6) The following are prohibited governing professional relationships:
- (A) Offering professional services to a client or recipient in a counseling relationship with another substance abuse counselor except with the knowledge of the other professional or after the termination of the client or recipient's relationship with the other professional;
- (B) Sending or receiving any commission or rebate or any other form of remuneration for referral of clients or recipients for professional services;
- (C) Accepting or charging a fee for a referral only when no other services are actually provided;
- (D) Accepting or charging a fee when no substance abuse professional services are actually provided; except actual costs for copies and administrative services may be recovered;
- (E) Accepting a private fee or gratuity or any other gift other than a one-time gift having a value of less than twenty five dollars (\$25.00) for professional work with a person who is entitled to the services through the professional's employer; or
- (F) Failing to cooperate with the investigations and proceedings of any professional ethics committee unless the failure is within the exercise of the professional's constitutional rights.

Statutory Authority G.S. 90-113.33; 90-113.37; 90-113.39; 90-113.40; 90-113.42; 90-113.43; 90-113.44; 90-113.45; 90-338.

.0602 COMPLAINT PROCEDURES

(a) Initiation. Any individual with personal knowledge that any person has violated the Code of Ethics, any other rules of the Board, or G.S. 90, Article 5C; may file a complaint against the substance abuse professional by submitting a written complaint.

(b) Form. The complaint shall be in writing, stating the nature of the alleged offense and signed by the complainant. The complaint shall include:

- (1) The name, address, and telephone number of the complainant;
- (2) The name, address, and telephone number of the person against whom the complaint is made;
- (3) A statement of the facts which clearly and accurately describes the allegations against the person.

(c) The complaint shall be investigated as set out in Rule .0603 of this Section.

(d) Once the Ethics Committee concludes there is a sufficient basis to schedule a disciplinary hearing before the Board, the Chairperson shall notify the person against whom the complaint is made by certified mail. The notice to the respondent shall include the following:

- (1) State the section(s) of the Code of Ethics, other rules of the Board, or G.S. 90, Article 5C which the complaint alleges has been violated;
- (2) A copy of the complaint;
- (3) Direct that the respondent reply in writing and by certified mail within 30 days of receipt of this notice;
- (4) Inform the respondent that failure to respond in writing within 30 days may result in revocation of certification.

(e) Failure of the respondent to reply to the charges, including each specific allegation, may be considered an admission of the facts contained in the allegation(s).

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.44; 90-113.45.

.0603 INVESTIGATION OF COMPLAINT

(a) The Ethics Committee Chairperson, in consultation with the President and legal counsel, shall investigate the allegations in the complaint. The Chairperson may appoint any person(s) or name a subcommittee to serve as the investigating entity and to prepare an investigative report.

(b) The investigating entity may contact the complainant and person against whom the complaint is made.

(c) Upon completion of the investigation, the Ethics Committee Chairperson in consultation with the investigating entity may determine that:

- (1) The complaint is without merit. The Chairperson shall notify the complainant that the complaint is dismissed. The Chairperson shall also notify the complainant of the procedure for appeal of the dismissal.
- (2) Upon completion of an investigation wherein the complaint is not dismissed, the investigating entity shall make a written report to the Ethics Committee.

(d) The Ethics Committee shall review the report and take the following action:

- (1) Schedule a disciplinary hearing before the Board;
- (2) Dismiss the complaint; or
- (3) Remand the matter to the investigating entity in order to obtain additional evidence sufficient upon which to base a decision.

Statutory Authority G.S. 90-113.33; 90-113.34; 90-113.44.

.0604 HEARING BEFORE BOARD

(a) A hearing shall be initiated:

- (1) At the call of the Ethics Committee in the case of a complaint against a certified professional; or
- (2) By any person on appeal of a final agency decision pursuant to G.S. 150B-22.

(b) The hearing shall be conducted in a fair and impartial manner, pursuant to G.S. 150B, Article 3A.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.44; 90-113.45.

.0605 METHOD OF DISCIPLINE

(a) Certification may be suspended, revoked or denied by a finding that grounds for disciplinary action as set out in G.S. 90-113.44 exist.

(b) The Board may impose the following disciplinary sanctions:

- (1) Revocation of certification;
- (2) Suspension of certification until further order of the Board or for a specified period of time;
- (3) Reprimand;
- (4) Denial of certification; or
- (5) Other sanctions which may be deemed appropriate by the Board, including probation in which specific terms and conditions may be imposed such as psychological counseling or testing.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.37; 90-113.43; 90-113.44; 90-113.45.

.0606 EFFECT OF ACTIONS OF COURT OR OTHER PROFESSIONAL GROUPS

(a) If a person certified or applying for certification by the Board has been disciplined by another professional organization or convicted of a felony or a misdemeanor and that discipline or conviction relates to his qualifications or functions as a substance abuse professional, the Ethics Committee or the Board may take this prior record into consideration when imposing disciplinary sanctions.

(b) When such prior discipline or conviction is discovered, it shall be referred to the Ethics Committee and shall be treated by the Ethics Committee in the same manner as a complaint.

(c) Such prior discipline or conviction as described in Paragraph (a) of this Rule shall be presumed to be correct and appropriate. In order to overcome this presumption, the respondent must prove to the Committee's or the Board's satisfaction at least one of the following:

- (1) The process was so flawed that the finding of the organization or board is without basis; or
- (2) The disciplinary action by the organization or board does not bear a reasonable relation to the conduct complained of resulting in undue punishment.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.39; 90-113.40; 90-113.43; 90-113.44; 90-113.45.

.0607 DISCRETION OF BOARD

The following factors may be considered by the Board in determining the nature and severity of the disciplinary sanctions to be imposed:

- (1) The relative seriousness of the violation as it relates to assuring the citizens of North Carolina a consistently high standard of professional service and care;
- (2) The facts of the particular violation;
- (3) Any extenuating circumstances or other countervailing considerations;
- (4) The number and seriousness of prior violations or complaints;
- (5) Whether remedial action has previously been taken;
- (6) Likelihood of reoccurrence; or
- (7) Other factors which may reflect upon the competency, ethical standards, and professional conduct of the individual.

Statutory Authority G.S. 90-113.33; 90-113.43; 90-113.44.

.0608 CONFIDENTIALITY

(a) At no time prior to the release of the final decision by the Board shall any portion of the action or the whole thereof, be made public or be distributed to any persons other than the members and chairperson of the involved committees, the Committee on Ethics, and its staff.

(b) Notwithstanding Paragraph (a) of this Rule, all materials shall be released as required by the Administrative Procedure Act.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.34.

.0609 PETITION FOR REOPENING CASE

(a) If a party, upon proper notice fails to appear, the hearing may proceed without the party. However, if the inquiry is conducted or a decision is reached in an administrative hearing in the absence of a party, or if a dismissal is entered prior to the granting of one continuance to the person petitioning for reopening the case, that party may file a written petition with the Board for a reopening of the case. The petition caption shall be entitled: "Petition for Reopening Hearing of Respondent."

(b) Petitions for reopening a contested case shall not be granted unless the petitioner can show that his or her failure to appear was justified and unavoidable and that fairness requires reopening the case.

(c) The decision of the Board to grant or deny the petition to reopen shall be in writing and a copy shall be sent to the petitioner and made a part of the record of the hearing.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.34; 90-113.40; 90-113.44; 90-113.45.

.0610 REINSTATEMENT FOLLOWING REVOCATION

(a) Upon a showing that there are circumstances that could establish a basis for reinstatement or certification following its denial, it shall be within the discretion of the

Board to grant such permission.

(b) A request for reinstatement or certification following its denial shall be initiated by the respondent.

(c) A letter of application for reinstatement certification following its denial shall present facts which, if established, shall be sufficient to enable the Board to determine that the basis for the sanction no longer exists.

(d) To determine that the basis for the sanction no longer exists the Board may consider:

- (1) The nature of the offense,
- (2) The severity of the offense,
- (3) Any resulting harm or injury to the public and its extent,
- (4) The length of time since the punishment was imposed,
- (5) Restitution made, and
- (6) Any other factor the Board considers relevant.

Statutory Authority G.S. 90-113.30; 90-113.33; 90-113.37; 90-113.39; 90-113.40; 90-113.44; 90-113.45.

The Rules Review Commission (RRC) objected to the following rules in accordance with G.S. 150B-21.9(a). State agencies are required to respond to RRC as provided in G.S. 150B-21.12(a).

ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Environmental Health

<i>15A NCAC 18A .2509 - Plan Review and Approval</i>		
<i>Rule Withdrawn by Agency</i>		09/21/95
<i>15A NCAC 18A .2531 - Wading Pools</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 18A .2531 - Spas and Hot Tubs</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95

Environmental Management

<i>15A NCAC 2B .0212 - Fresh Surface Water Quality Standards for Class WS-I Waters</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 2B .0214 - Fresh Surface Water Quality Standards for Class WS-II Waters</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 2B .0215 - Fresh Surface Water Quality Standards for Class WS-III Waters</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 2B .0219 - Fresh Surface Water Quality Standards for Class B Waters</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 2B .0222 - Tidal Salt Water Quality Standards for Class SB Waters</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 2B .0224 - High Quality Waters</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 2H .1003 - Coastal Stormwater Disposal</i>	<i>RRC Objection</i>	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	08/10/95
<i>15A NCAC 2H .1008 - Design of Stormwater Management Measures</i>	<i>RRC Objection</i>	08/10/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	08/10/95

Health: Epidemiology

<i>15A NCAC 19H .0702 - Research Requests</i>		
<i>Rule Withdrawn by Agency</i>		09/21/95

Sedimentation Control

<i>15A NCAC 4B .0020 - Inspections and Investigations</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95

Solid Waste Management

<i>15A NCAC 13B .0815 - Incorporation by Reference</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 13B .0817 - Septage Management Firm Permits</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 13B .0819 - Septage Land Application Site Permits</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 13B .0820 - Septage Detention and Treatment Facility Permits</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 13B .0821 - Location of Septage Land Application Sites</i>	<i>RRC Objection</i>	09/21/95
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	09/21/95
<i>15A NCAC 13B .0822 - Management of Septage Land Application Sites</i>	<i>RRC Objection</i>	09/21/95

RRC OBJECTIONS

Agency Revised Rule	Obj. Removed	09/21/95
15A NCAC 13B .0825 - Standards for Septage Treatment and Detention Facilities	RRC Objection	09/21/95
Agency Revised Rule	Obj. Removed	09/21/95
Wildlife Resources and Water Safety		
15A NCAC 10F .0313 - Hyde County	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
HUMAN RESOURCES		
Facility Services		
10 NCAC 3C .3001 - Definitions	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3108 - Suspension of Admissions	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3205 - Discharge of Minor or Incompetent	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3302 - Minimum Provisions of Patient's Bill of Rights	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3502 - Bylaws	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3602 - Responsibilities	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3603 - Personnel Policies and Practices	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3607 - Personnel Health Requirements	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3608 - Insurance	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3704 - Status	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3902 - Manager	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .3904 - Patient Access	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4003 - Policies and Procedures	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4102 - Classification of Optional Emergency Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4104 - Medical Director	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4203 - Nursing Staff	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4303 - Nursing Services Maternal Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4307 - Nursing Staff of Neonatal Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4401 - Organization	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4502 - Pharmacist	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4512 - Medications Dispensed	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4702 - Organization	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95

RRC OBJECTIONS

10 NCAC 3C .4703 - Sanitation and Safety	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4704 - Distribution of Food	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4705 - Nutritional Support	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4801 - Organization	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .4905 - Tissue Removal and Disposal	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5002 - Delivery of Care	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5201 - Psychiatric/Substance Abuse Svcs.: Applicability of Rules	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5202 - Definitions Applicable/Psychiatric/Substance Abuse Svcs.	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5205 - Seclusion	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5302 - Definitions	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5309 - Nursing/Health Care Administration and Supervision	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5315 - Dental Care	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5318 - Activities and Recreation	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5319 - Social Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5322 - Brain Injury Extended Care Physician Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5323 - Brain Injury Extended Care Program Requirements	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5324 - Special Nursing Req. Brain Injury Long Term Care	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5325 - Ventilator Dependence	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5326 - Physician Services for Ventilator Dependent Patients	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5403 - HIV Designated Unit Policies and Procedures	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5405 - Physician Services in a HIV Designated Unit	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5407 - Use of Investigational Drugs on the HIV Designated Unit	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5501 - Definitions	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5502 - Physician Reg. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5507 - Comprehensive Rehabilitation Personnel Administration	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5508 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5512 - Additional Req. for Traumatic Brain Injury Patients	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .5513 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .6102 - List of Referenced Codes and Standards	RRC Objection	07/13/95

RRC OBJECTIONS

No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3C .6208 - Obstetrical Department Requirements	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2001 - Definitions	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2201 - Administrator	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2202 - Admissions	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2203 - Patients Not to be Admitted	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2206 - Medical Director	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2209 - Infection Control	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2212 - Quality Assurance Committee	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2301 - Patient Assessment and Care Planning	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2302 - Nursing Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2308 - Domiciliary Home Personnel Requirements	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2401 - Maintenance of Medical Records	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2501 - Availability of Physician's Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2505 - Brain Injury Long-Term Care Physician Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2506 - Physician Services for Ventilator Dependent Patients	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2601 - Availability of Pharmaceutical Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2604 - Drug Procurement	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2605 - Drug Storage and Disposition	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2606 - Pharmaceutical Records	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2607 - Emergency Drugs	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2701 - Provision of Nutrition and Dietetic Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2801 - Activity Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .2802 - Social Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3002 - Quality of Specialized Rehabilitation Services	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3003 - Ventilator Dependence	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3004 - Brain Injury Long-Term Care	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3005 - Special Nursing Req. for Brain Injury Long-Term Care	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3011 - HIV Designated Unit Policies and Procedures	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95

RRC OBJECTIONS

10 NCAC 3H .3012 - Physician Services in an HIV Designated Unit	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3013 - Special Nursing Requirements for an HIV Designated Unit	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3015 - Use of Investigational Drugs for HIV Designated Units	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3016 - Additional Social Work Req. for HIV Designated Units	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3021 - Physician Req. for Inpatient Rehab. Facilities or Units	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3027 - Comprehensive Inpatient Rehab. Program Staffing Req.	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3031 - Additional Req. for Spinal Cord Injury Patients	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3103 - Site	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3201 - Required Spaces	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3401 - Heating and Air Conditioning	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .3404 - Other	RRC Objection	07/13/95
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3O .0305 - Persons Subject to Licensure	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0506 - Simplified Reporting for Certain Organizations	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3O .0607 - License Year	RRC Objection	05/18/95
Agency Revised Rule	Obj. Removed	05/18/95
10 NCAC 3U .0705 - Special Training Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1403 - Aquatic Activities	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95
10 NCAC 3U .1717 - Health, Safety and Sanitation Requirements	RRC Objection	07/13/95
Agency Revised Rule	Obj. Removed	07/13/95

RRC has Objected to the Following Repeals in 10 NCAC 3C and 10 NCAC 3H:

10 NCAC 3C .0101 - .0102, .0104 - .0110, .0201 - .0203, .0301 - .0307, .0401 - .0407, .0501 - .0505, .0601 - .0604, .0701 - .0708, .0801 - .0805, .0807, .0901 - .0917, .1001 - .1006, .1101 - .1102, .1201 - .1204, .1301 - .1303, .1401 - .1405, .1501 - .1508, .1510, .1601 - .1606, .1701 - .1717, .1801 - .1805, .1901 - .1912, .1915 - .1932, .2001 - .2008, .2020 - .2033, .2101 - .2105.		
No Response from Agency	Obj. Cont'd	09/21/95
10 NCAC 3H .0108 - .0109, .0206 - .0220, .0306 - .0318, .0407 - .0409, .0505 - .0507, .0510 - .0517, .0605 - .0609, .0705 - .0712, .0810 - .0812, .0903 - .0911, .1003 - .1008, .1105 - .1109, .1130 - .1136, .1150 - .1163, .1204 - .1208, .1210, .1306 - .1308, .1405 - .1406, .1408 - .1410, .1501 - .1503, .1612 - .1613, .1703 - .1704, .1804 - .1807.		
No Response from Agency	Obj. Cont'd	09/21/95

LICENSING BOARDS AND COMMISSIONS

Board of Medical Examiners

21 NCAC 32H .0102 - Definitions	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 32H .0506 - Certification Requirement: Emergency Medical Dispatcher	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	09/21/95
21 NCAC 32N .0002 - Continuances	RRC Objection	08/10/95
Agency Responded - Agency Will Not Revise Rule	Obj. Cont'd	09/21/95

Board of Pharmacy

21 NCAC 46 .1601 - Pharmacy Permits	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .1608 - Device and Medical Equipment Permits	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2601 - Dispensing and Delivery	RRC Objection	08/10/95
Agency Revised Rule	Obj. Cont'd	08/10/95
Agency Revised Rule	Obj. Removed	09/21/95
21 NCAC 46 .2602 - Orders		
Rule Withdrawn by Agency		08/10/95
21 NCAC 46 .2603 - Education and Training	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2604 - Records	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2605 - Registration of Non-Pharmacists	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2606 - Conveying Warnings	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2609 - Rehabilitation Equipment	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
21 NCAC 46 .2803 - Req/pharmacies Dispensing Sterile Parenteral Pharmaceuticals	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95

Board of Physical Therapy Examiners

21 NCAC 48C .0103 - Prohibited Practice		
Rule Withdrawn by Agency		09/21/95
21 NCAC 48E .0110 - Foreign-Trained Physical Therapists	RRC Objection	09/21/95
Agency Revised Rule	Obj. Removed	09/21/95
21 NCAC 48G .0514 - Continuances	RRC Objection	09/21/95
Agency Revised Rule	Obj. Removed	09/21/95
21 NCAC 48H .0703 - Hearings	RRC Objection	09/21/95
Agency Revised Rule	Obj. Removed	09/21/95

Board of Practicing Psychologists

21 NCAC 54 .1702 - Foreign Degree Application Policy	RRC Objection	09/21/95
Agency Revised Rule	Obj. Removed	09/21/95

SECRETARY OF STATE

Securities Division

18 NCAC 6 .1209 - Nonprofit Securities	RRC Objection	08/10/95
Agency Revised Rule	Obj. Cont'd	08/10/95
Rule Returned to Agency		09/21/95
18 NCAC 6 .1314 - Escrow Agreements	RRC Objection	08/10/95
Rule Returned to Agency		09/21/95
18 NCAC 6 .1401 - Application for Registration of Dealers	RRC Objection	08/10/95
Agency Revised Rule	Obj. Cont'd	08/10/95
Rule Returned to Agency		09/21/95
18 NCAC 6 .1402 - Application for Registration of Salesmen	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
18 NCAC 6 .1413 - Salesman Examination Required	RRC Objection	08/10/95
Agency Revised Rule	Obj. Removed	08/10/95
18 NCAC 6 .1702 - Application for Investment Adviser Registration	RRC Objection	08/10/95

RRC OBJECTIONS

<i>Agency Revised Rule</i>	<i>Obj. Cont'd</i>	<i>08/10/95</i>
<i>Rule Returned to Agency</i>		<i>09/21/95</i>
<i>18 NCAC 6 .1713 - Invest Adviser Merger/Consolidation/Acquisition/Succession</i>	<i>RRC Objection</i>	<i>08/10/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>
<i>18 NCAC 6 .1901 - Application for Registration of Athlete Agents</i>	<i>RRC Objection</i>	<i>08/10/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>08/10/95</i>

STATE PERSONNEL**Office of State Personnel**

<i>25 NCAC 1C .0405 - Temporary Appointment</i>	<i>RRC Objection</i>	<i>07/13/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>
<i>25 NCAC 1C .0407 - Temporary Part-Time Appointment</i>	<i>RRC Objection</i>	<i>07/13/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>
<i>25 NCAC 1D .2001 - Coverage</i>	<i>RRC Objection</i>	<i>07/13/95</i>
<i>Agency Repealed Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>
<i>25 NCAC 1E .1408 - Certification</i>	<i>RRC Objection</i>	<i>09/21/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/21/95</i>
<i>25 NCAC 1J .0615 - Special Provisions</i>	<i>RRC Objection</i>	<i>09/21/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>09/21/95</i>
<i>25 NCAC 1K .0312 - Eligibility</i>	<i>RRC Objection</i>	<i>07/13/95</i>
<i>Agency Revised Rule</i>	<i>Obj. Removed</i>	<i>07/13/95</i>

This Section contains the full text of some of the more significant Administrative Law Judge decisions along with an index to all recent contested cases decisions which are filed under North Carolina's Administrative Procedure Act. Copies of the decisions listed in the index and not published are available upon request for a minimal charge by contacting the Office of Administrative Hearings, (919) 733-2698.

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
ADMINISTRATION				
<i>Division of Purchase and Contract</i>				
Senter-Sanders Tractor Corp. v. Admin., Div of Purchase & Contract	94 DOA 0803	Nesnow	03/06/95	
CMC Maintenance Co., a Div. of RDS Corp. v. Dept. of Administration, Div. of Purchase & Contract, et al.	95 DOA 0194	Phipps	06/13/95	
<i>State Construction Office</i>				
W. M. Piatt & Company v. State Construction Office, DOA	94 DOA 0738	Nesnow	04/11/95	10:03 NCR 221
Holland Group, Inc. v. Dept. of Administration, St. Construction Office	94 DOA 1565	Nesnow	06/01/95	10:07 NCR 619
ALCOHOLIC BEVERAGE CONTROL COMMISSION				
Ali Alsaras v. Alcoholic Beverage Control Commission	94 ABC 0526	Chess	05/16/95	
Norman D. Forbes v. Alcoholic Beverage Control Commission	94 ABC 0787	Gray	03/17/95	
Ben Sproul and Steve Pauls v. Alcoholic Beverage Control Comm.	94 ABC 1046	Chess	08/17/95	
Albert Stanley Tomanec v. Alcoholic Beverage Control Commission	94 ABC 1168	Becton	03/07/95	
Robert Johnson v. Alcoholic Beverage Control Commission	94 ABC 1661	West	05/01/95	
Stinking Mercury, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1682	Chess	05/03/95	
Alcoholic Beverage Control Comm. v. Depot Stop N Go, Inc.	94 ABC 1694	Mann	03/29/95	
John H. Robinson v. Alcoholic Beverage Control Commission	94 ABC 1727	Morrison	05/18/95	
Clara and Carson Young v. Alcoholic Beverage Control Commission	94 ABC 1729	Chess	05/11/95	
Vladimir Walter Kozlik Jr. v. Alcoholic Beverage Control Commission	94 ABC 1754*12	Mann	08/02/95	10:11 NCR 960
Bryan Lynn Whitaker, Susan Ansley Whitaker v. ABC Commission	94 ABC 1784	Mann	04/19/95	
Diamond Club, Inc. v. Alcoholic Beverage Control Commission	94 ABC 1803	Mann	04/07/95	
Alcoholic Beverage Control Commission v. Weisner, Inc.	95 ABC 0068	West	06/07/95	
Robert Louis Reese v. Alcoholic Beverage Control Commission	95 ABC 0074	Chess	05/25/95	
Ray E. Bailey v. Alcoholic Beverage Control Commission	95 ABC 0210	Gray	05/01/95	
Legwin Z. Williams v. Alcoholic Beverage Control Commission	95 ABC 0224	Nesnow	05/31/95	10:06 NCR 417
Taleb Abed Rahman v. Alcoholic Beverage Control Commission	95 ABC 0323	Phipps	08/02/95	
Sherrill Douglas Langston v. Alcoholic Beverage Control Commission	95 ABC 0415	Nesnow	08/01/95	10:10 NCR 868
Alcoholic Beverage Control Comm. v. Janice Mae Miles	95 ABC 0434	West	07/20/95	
Imran Ali Hameerah v. Alcoholic Beverage Control Commission and City of Raleigh	95 ABC 0477	Phipps	07/14/95	
Alcoholic Beverage Control Commission v. Vladimir Walter Kozlik Jr.	95 ABC 0518*12	Mann	08/02/95	10:11 NCR 960
Mychal R. Hill v. Alcoholic Beverage Control Commission	95 ABC 0617	Morrison	09/08/95	
Alcoholic Bev Cont Comm. v. Partnership, T/A Royal Knights Soc Club	95 ABC 0711	Phipps	09/14/95	
Alcoholic Beverage Control Comm. v. Nancy Wheeler Wolfe	95 ABC 0713	Phipps	09/14/95	
CRIME CONTROL AND PUBLIC SAFETY				
Patrick O. Hawkins v. Office of Administrative Hearings	95 CPS 0361	Phipps	08/01/95	
<i>Crime Victims Compensation Commission</i>				
John Pavlikianidis v. Victims Compensation Commission	94 CPS 0237	Morrison	03/21/95	10:02 NCR 176
Fay, Cynthia, S. Dalton v. Crime Victims Compensation Commission	94 CPS 0445**	West	05/30/95	
Phyllis H. Steinmetz v. Crime Victims Compensation Commission	94 CPS 0542	West	05/16/95	
Hubert Johnson, Edna J. Carter v. Crime Victims Compensation Comm.	94 CPS 1177	Mann	06/12/95	
Wayne L. Utley v. Crime Victims Compensation Commission	94 CPS 1180	Becton	03/07/95	
Sandra H. Hughes v. Victims Compensation Commission	94 CPS 1600	Morrison	06/09/95	
Kristine S. Ray v. Crime Victims Compensation Commission	94 CPS 1673	Chess	04/20/95	
Shirley Moody Myers v. Crime Victims Compensation Commission	94 CPS 1674	Chess	04/20/95	

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Thomasine Inman v. Crime Victims Compensation Commission	94 CPS 1731	Nesnow	03/09/95	
Irmgard Gordos v. Crime Victims Compensation Commission	94 CPS 1782	Gray	03/09/95	
Fay, Cynthia, S. Dalton v. Crime Victims Compensation Commission	95 CPS 0010**	West	05/30/95	
Ellen Sherwin v. Crime Vic Comp James Byrum Emp/ Baptist Hosp	95 CPS 0012	West	03/22/95	
Anthony Harold Stone v. Crime Victims Compensation Commission	95 CPS 0115	Chess	08/22/95	
Howard B. Peterson v. Crime Victims Compensation Commission	95 CPS 0163	Reilly	07/06/95	
Ella Ruth Jordan v. Gary B. Eichelberger Dir., Crime Vic. Comp. Comm.	95 CPS 0181	West	06/21/95	
Lynn H. Henderson v. CPS, Victims Compensation Commission	95 CPS 0212	Morrison	05/08/95	
Larusha Bey v. Crime Victims Compensation Commission	95 CPS 0245	Reilly	06/02/95	
Percible Gaston v. Crime Victims Compensation Commission	95 CPS 0270	Gray	06/13/95	
Horton Edward v. Crime Victims Compensation Commission	95 CPS 0331	Phipps	07/25/95	
David Leo Rice v. CPS, Crime Victims Compensation Commission	95 CPS 0335	Morrison	09/15/95	
Janet Ring Stevens v. Crime Victims Compensation Commission	95 CPS 0337	Gray	07/21/95	
Michael A. Herd v. Crime Victims Compensation Commission	95 CPS 0349	Chess	08/15/95	
Juan Aguilar v. Crime Victims Compensation Commission	95 CPS 0356	Reilly	06/22/95	
Albert Lionell Meadows v. Crime Victims Compensation Commission	95 CPS 0373	Gray	09/27/95	
John Kuwalik v. Crime Victims Compensation Commission	95 CPS 0381	Becton	07/10/95	
Sandra Jones v. Crime Victims Compensation Commission	95 CPS 0427	Nesnow	06/02/95	
Edsel Batts Jr. v. CPS, Crime Victims Compensation Commission	95 CPS 0456	Phipps	09/29/95	
Mark Edward Altman v. CPS, Crime Victims Compensation Commission	95 CPS 0461	West	07/25/95	
Roland Lee Kelly, Jr. v. United Family Svcs, Vic Assis/Crime Vic. Comp	95 CPS 0568	Phipps	08/09/95	
Danny Ray Bell v. Crime Victims Compensation Commission	95 CPS 0737	Reilly	09/11/95	
Margie Lunsford v. Crime Victims Compensation Commission	95 CPS 0779	Becton	09/19/95	

BOARD OF ELECTROLYSIS EXAMINERS

Diane Rawls v. North Carolina Board of Electrolysis Examiners	95 BEE 0173	West	08/03/95	
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ENVIRONMENT, HEALTH, AND NATURAL RESOURCES

Concrete Supply Company v. Environment, Health, & Natural Resources	94 EHR 0950	Gray	05/23/95	10:06 NCR 414
Setzer Bros. Inc. v. Environment, Health, and Natural Resources	94 EHR 1676	Nesnow	03/09/95	
Environment, Health, & Natural Resources v. Royal James Cafe	94 EHR 1756	Becton	06/30/95	10:08 NCR 696
John W. VanHoy, Jr. & Adjacent Land Owners v. EHNR	95 EHR 0016	Phipps	03/17/95	
and Shugart Enterprises, Inc.				
Browning-Ferris Ind. of S. Atlantic, Inc. and Sampson Cty. Disposal, Inc.	95 EHR 0506	West	06/13/95	
v. Dept. of Environment, Health, and Natural Resources,				
and Hoke County and Bladen County				

Coastal Resources

William C. Young v. Coastal Resources Commission	95 EHR 0009	Chess	06/13/95	
and Robert L. Casper, Jr. and Mary M. Casper				
Howard C. Slack v. Coastal Resources Comm, EHNR	95 EHR 0140	Phipps	03/22/95	10:02 NCR 185

Davidson County Health Department

John Dee Clodfelter v. Davidson County Health Dept.; EHNR	94 EHR 1037	Chess	03/13/95	
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Environmental Health

EEE-ZZZ Lay Drain Company, Inc. v. On-Site Wastewater Section, Division of Environmental Health	94 EHR 0745	Chess	04/24/95	
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Environmental Management

United Screen Printers, Inc. v. EHNR, Div. of Environmental Mgmt.	91 EHR 1179**	West	05/30/95	
Empire Power Co. and George Clark v. EHNR, Div. of Env. Mgmt.	92 EHR 0021**	Gray	04/03/95	
and Duke Power Company				

** Consolidated cases.

CONTESTED CASE DECISIONS

<u>AGENCY</u>	<u>CASE NUMBER</u>	<u>ALJ</u>	<u>DATE OF DECISION</u>	<u>PUBLISHED DECISION REGISTER CITATION</u>
Empire Power Co. and George Clark v. EHNR, Div. of Env. Mgmt. and Duke Power Company	92 EHR 0053*1	Gray	04/03/95	
United Screen Printers, Inc. v. EHNR, Div. of Environmental Mgmt.	93 EHR 0273*5	West	05/30/95	
Kenan Oil Company, Inc. v. EHNR, Div. of Environmental Mgmt.	94 EHR 0894	Nesnow	05/08/95	
Moffitt and Pierce Construction, Inc. v. EHNR, Environmental Mgmt.	94 EHR 1755	West	06/06/95	
<i>Hyde County Health Department</i>				
Fritzner Henry v. Hyde County Health Department	94 EHR 0924	Gray	03/09/95	
<i>Macon County Health Department</i>				
Four Residents on Genva Circle v. Macon County Health Department	94 EHR 1202	Nesnow	03/27/95	
<i>Marine Fisheries</i>				
Chancy Junior Sawyer v. EHNR, Division of Marine Fisheries	94 EHR 1786	Ches	05/22/95	
<i>Maternal and Child Health</i>				
Jimmy Franklin v. EHNR Maternal & Child Hlth, Nutrition Services	94 EHR 0288	Gray	05/22/95	
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Philip Haskins v. EHNR, Div. of Maternal & Child Health	94 EHR 1777	Ches	03/09/95	
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<i>New Hanover County Health Department</i>				
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<i>Pitt County Public Health Center</i>				
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<i>Division of Solid Waste Management</i>				
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Joyce Hildreth v. EHNR, Division of Solid Waste Management	95 EHR 0851	Morrison	09/13/95	
<i>Wayne County Department of Health</i>				
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Veronica Spearman, John P. Spearman v. Dept. of Human Resources	95 DHR 0216	Reilly	06/02/95	
Sandra Jean Taylor v. Department of Human Resources	95 DHR 0366	Reilly	07/19/95	
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Samuel Simmons & Wife, Alpha Mack Simmons v. Human Resources	94 DHR 1617	Gray	09/13/95	10:13 NCR 1205
Willie & Pamela Sturgess v. DHR, Division of Child Development	94 DHR 1631	Reilly	07/10/95	
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Lisa Marie Shanks v. Department of Human Resources	95 DHR 0121	West	08/03/95	
Brenda I. McAllister v. DHR, Division of Facility Services	95 DHR 0149	West	09/11/95	
<i>Bingo Licensure Section</i>				
The Regular Veterans Association of the United States and the Sixteen Posts of the Regular Veterans Association of the United States and the Regular Veterans Association Auxiliary Located in the State of North Carolina v. DHR, Division of Facility Services, Bingo Licensure Section	95 DHR 0040	Morrison	04/13/95	
<i>Certificate of Need Section</i>				
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The Carrolton of Fayetteville, Inc. and Highland House of Fayetteville, Inc. and Richard Allen, Sr. v. DHR, Division of Facility Services, Certificate of Need Section and Pine Manor Rest Home, Inc., d/b/a Pine Manor Health Care	94 DHR 0198*2	Reilly	04/05/95	
Retirement Villages, Inc. (Lessor), and Liberty Healthcare Ltd. Partnership (Lessee) D/B/A Countryside Villa of Duplin v. DHR, Division of Facility Services, Certificate of Need Section and Beaver Properties/Wallace, Inc., and Brian Center Health & Retirement/ Wallace, Inc.	94 DHR 0403	Chess	12/14/94	
<i>Office of Emergency Medical Services</i>				
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<i>Division of Medical Facilities Licensure Section</i>				
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<i>Division of Medical Assistance</i>				
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Antonio Darden (IV-D #1280116) v. Department of Human Resources	94 CSE 1462	Becton	04/07/95	
Antonio Darden (IV-D #1233347) v. Department of Human Resources	94 CSE 1463	Becton	04/07/95	
Leonard Keith Morgan v. Department of Human Resources	94 CSE 1464	Chess	08/15/95	
Michael Shannon v. Department of Human Resources	94 CSE 1466	Chess	06/09/95	
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Peter Ian Oliveira v. Department of Human Resources	94 CSE 1489	Becton	03/07/95	
Ronald E. Lewis v. Department of Human Resources	94 CSE 1491	Becton	03/07/95	
Wesley Kelvin Cook v. Department of Human Resources	94 CSE 1492	Becton	04/07/95	
Everett Lee Hunt v. Department of Human Resources	94 CSE 1493	Chess	06/01/95	
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Rick E. Atkins v. Department of Human Resources	94 CSE 1496	Chess	06/28/95	
Timothy James Burnett v. Department of Human Resources	94 CSE 1498	Chess	07/20/95	
Carlos L. Robinson v. Department of Human Resources	94 CSE 1499	Mann	03/31/95	
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Leroy Jones v. Department of Human Resources	94 CSE 1622	Nesnow	07/05/95	
Bernard Cooper v. Department of Human Resources	94 CSE 1623	Nesnow	04/17/95	
William Gray v. Department of Human Resources	94 CSE 1645	Becton	04/25/95	
Edward Lockhart v. Department of Human Resources	94 CSE 1646	Chase	06/02/95	
Duane B. Marshburn v. Department of Human Resources	94 CSE 1647	Mann	08/03/95	
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David Dean Davis v. Department of Human Resources	95 CSE 0350	Phipps	07/26/95	
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Walter Richardson, Jr. v. Department of Human Resources	95 CSE 0710	Chess	09/26/95	
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Mr. and Mrs. William Jefferson v. Hoke Cty Soc Svcs, Linda Cromartie	95 DHR 0857	Gray	08/17/95
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INSURANCE				
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Mark Jason Smith v. Sheriff's Ed. & Training Stds. Comm.	95 DOJ 0795	Gray	08/14/95	
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<i>Private Protective Services Board</i>				
Lewis Austin Saintsing v. Private Protective Services Board	94 DOJ 1000	Chess	03/03/95	
Marcus T. Williams v. Private Protective Services Board	94 DOJ 1064	Chess	02/24/95	
Melvin Ray Cooper v. Private Protective Services Board	94 DOJ 1635	Reilly	03/09/95	
Donnell E. Morrow, Jr. v. Private Protective Services Board	94 DOJ 1823	Reilly	03/09/95	
Private Protective Services Board v. James C. Purvis	95 DOJ 0018	Chess	05/15/95	
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Glenn II, on behalf of Glenn II, and Glenn II, Individually v. Charlotte-Mecklenburg County Schools	93 EDC 0549	Ches	03/16/95	
S.M. on Behalf of J.A.M., and S.M., Individually, and J.M. v. Davie County Board of Education	93 EDC 0742	Phippe	05/30/95	
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James Midgett v. State Board of Education	94 EDC 1401	Reilly	05/02/95	
Deborah R. Crouse v. State Board of Education	95 EDC 0003	Ches	04/10/95	
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Dennis Harrell v. Department of Correction	95 OSP 0440	Phippe	09/05/95	10:13 NCR 1209
William E. Norwood, Jr. v. Department of Correction	95 OSP 0500	Gray	08/16/95	
<i>Department of Crime Control and Public Safety</i>				
Betty Sue Whitley v. National Guard Dept. Crime Control & Public Safety	94 OSP 1399	Ches	06/13/95	
Robert W. Beasley v. Crime Control & Public Safety, St. Highway Patrol	94 OSP 1821	Morrison	08/10/95	10:11 NCR 965
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<i>Dorothea Dix Hospital</i>				
Paul E. Hunter v. Dorothea Dix Hospital	95 OSP 0504	Gray	07/12/95	
<i>Durham County Health Department</i>				
Laurie A. Gerhard v. Durham County Health Department	95 OSP 0220	Phippe	08/17/95	10:12 NCR 1043

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Lillie Mercer Atkinson v. ECU, Dept. of Comparative Medicine, et al.	95 OSP 0038*7	Becton	06/08/95	
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Darrell Edwin Fricke v. Guilford County Mental Health (Thomas S. Div.)	95 OSP 0942	West	09/22/95	
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<i>Iredell County Department of Social Services</i>				
Vernon E. Grosse v. Iredell County Department of Social Services	94 OSP 0282	Becton	03/09/95	
Bonnie N. Bellamy v. Iredell County Department of Social Services	94 OSP 0739	Chess	03/01/95	10:01 NCR 48
<i>Richmond County Department of Social Services</i>				
Emma Jane Bradley v. Richmond County Dept. of Social Services	95 OSP 0055	Reilly	07/18/95	10:09 NCR 809
<i>Wake County Department of Health</i>				
Regina K. Crowder v. Wake County/Health Dept., Caroline E. Lee, Dir.	94 OSP 1032**	Nesnow	06/12/95	
Sabrina R. Crowder v. Wake County/Health Dept., Richard Stevens	94 OSP 1072**	Nesnow	06/12/95	
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David L. Bauer v. North Carolina State University	95 OSP 0044	Morrison	04/25/95	
Billy Ray Kelly v. NCSU Physical Plant	95 OSP 0130	West	03/22/95	
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Robert F. Goins v. Department of Transportation	94 OSP 0281	Chess	05/30/95	
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Bryan L. Basden v. Retirement Systems Division	95 OSP 0171	Chess	06/21/95	
Wayne La Broad v. Bd./Trustees//Teachers/St. Emp. Retirement Sys.	95 DST 0219	Morrison	07/14/95	
Tammy Evonne Ashcroft Brown v. Bd./Tr./NC Local Gov. Emp. Ret Sys.	95 DST 0404	Phipps	07/27/95	10:10 NCR 872
UNIVERSITY OF NORTH CAROLINA				
Jerry B. Potter, Sr. v. UNC Hospitals at Chapel Hill	95 UNC 0502	Gray	09/12/95	

STATE OF NORTH CAROLINA
COUNTY OF MECKLENBURG

IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
92 EHR 1028

CHEROKEE RESOURCES INC.)

Petitioner,)

v.)

N.C. DEPARTMENT OF ENVIRONMENT,
HEALTH, AND NATURAL RESOURCES,
DIVISION OF SOLID WASTE MANAGEMENT
Respondent.)

**FINAL DECISION
ORDER OF DISMISSAL**

THIS MATTER came on to be heard before the undersigned administrative law judge upon consideration of the Respondent's Motion to Dismiss on the ground that the issues in the contested case are now moot. Having considered the motion, the response, and the pleadings, the undersigned makes the following final decision:

PETITIONER'S MOTION TO DISMISS

Petitioner initiated this case by filing a "Motion to Set Aside, Vacate and Quash the Alleged and Pretended Compliance Order, under Special Appearance" on September 29, 1992 based upon the fact that the Respondent assessed the civil penalty beyond the one-year statute of limitations found in G.S. 1-54(2). That motion was denied by Administrative Law Judge Thomas R. West on November 23, 1994. Petitioner reasserts this motion in its Response to NCDEHNR's Motion to Dismiss. The undersigned will not reconsider a decision of a preceding administrative law judge who presided in this contested case; however, in support of the previous judge's decision, the undersigned cites Ocean Hill Joint Venture v. N.C. Dept. of Environment, Health, & Natural Resources, 333 N.C. 318, 426 S.E.2d 274 (1993), which held that G.S. 1-54(2) does not apply to the assessment of a civil penalty by this department because it is not an "action or proceeding" as that term is used in G.S. 1-54(2).

FINDINGS OF FACT

1. Cherokee Resources, Inc. d/b/a Cherokee Oil Company is a North Carolina corporation which generated and transported hazardous waste in Charlotte, North Carolina.
2. On July 10, 1992, the Division of Solid Waste Management in the Department of Environment, Health and Natural Resources issued a Compliance Order with Administrative Penalty against Cherokee Resources. This Order was issued pursuant to the North Carolina Solid Waste Management Act, Article 9 of G.S. 130A, and the rules promulgated pursuant to that Act which are codified at 15A NCAC 13A.
3. In the Compliance Order, Cherokee Resources was assessed the following penalties in the total amount of \$75,000.00:
 - A. \$25,000.00 for violation of 40 CFR 263.20, codified at 15A NCAC 13A .0008, in that it did not ensure that a manifest accompanied hazardous waste;
 - B. \$25,000.00 for violation of 15A NCAC .0009(a), in that it stored hazardous waste and did not comply with the requirements set forth in this section; and
 - C. \$25,000.00 for violation of 40 CFR 270.10(a), codified at 15A NCAC 13A .0013, in that it did not complete, sign, and submit an application to the Department upon becoming subject to storage facility regulations.
4. Also in the Compliance Order, Cherokee Resources was ordered to comply with certain conditions in order to remain in operation. These conditions included: a) ensuring that a manifest accompanied all hazardous wastes that it imports and submitting a copy of the manifest used to ship the five drums of waste to Laidlaw Environmental Services

facility; b) complying with 15A NCAC 13A .0009(a) or not storing hazardous waste longer than ten days; and c) submitting a permit application as a storage facility or not storing hazardous waste longer than ten days.

5. Petitioner was served with the Compliance Order on August 6, 1992 and advised in the Order of its appeal rights. On September 3, 1992, Petitioner Keith Eidson, as President of Cherokee Resources, filed a letter and motions stating that he was making a special appearance for the purpose of filing a Motion to Set Aside, Vacate, and Quash the Compliance Order. He further moved for a continuance to file the petition for contested case. On September 9, 1992, the Clerk's Office of the Office of Administrative Hearings sent a letter to the Petitioner with a petition form requesting that all sections be completed. The Motion to Set Aside was filed on September 29, 1992. The statutory deadline for filing the petition in this case was September 5, 1992. As of this date, no petition for contested case hearing has been filed.

6. On June 29, 1994, Petitioner's principal officers were convicted in federal court for violations of the environmental protection laws and are presently serving an active term of imprisonment in the federal prison at Seymour Johnson Air Force Base in Goldsboro, North Carolina.

7. As a result of the federal enforcement action taken against the Petitioner as well as the imprisonment of Petitioner's principal officers, the Respondent agency states that the Conditions for Continued Operation are no longer applicable or enforceable. Also as a result of the federal enforcement action and the imprisonment of the principal officers, the Respondent agency has reduced the penalty to zero. Nothing more will be required of the Petitioner from the Respondent.

Based upon the foregoing Findings of Fact, the undersigned makes the following:

CONCLUSIONS OF LAW

1. Because the Respondent has reduced the civil penalty to zero and rescinded its requirement that the Petitioner comply with the Conditions for Continued Operations, the issues in this contested case are now moot. Intervening events such as the federal intervention and subsequent imprisonment have caused the alleged illegality to no longer exist and a likelihood that the violation will not recur, "thus suggesting judicial review would be meaningless" and any decision would have no "proven impact." Koch, "Limitations on Judicial Review," Administrative Law and Practice, Sec. 10.41 (1985 & Supp. 1995) (citations omitted). Therefore, the Office of Administrative Hearings no longer has subject matter jurisdiction over this contested case.

2. The undersigned also concludes that the Office of Administrative Hearings does not have subject matter jurisdiction over this matter ab initio in that the Petitioner failed to file a petition for contested case hearing within the statutory deadline of 30 days. G.S. 130A-22(e). North Carolina cases interpreting administrative laws have consistently held that a contested case petition to challenge an agency's decision must be filed within the statutory deadline. Gaskill v. State ex rel. Cobey, 109 N.C.App. 656, 428 S.E.2d 474, cert. denied, 334 N.C. 163, 432 S.E.2d 359 (1993); Gummels v. N.C. Dept. of Human Resources, 98 N.C.App. 675, 392 S.E.2d 113 (1990).

3. The only matter that was initially before this court was the Motion to Set Aside and it was ruled upon on November 23, 1994. The undersigned further concludes that OAH did not have jurisdiction to consider this motion simply because no petition for contested case has ever been filed. G.S. 150B-23(a) requires that in order to initiate a contested case, a petition must be filed. G.S. 150B-23(a); 26 NCAC 3 .0103(a).

Based upon the foregoing Findings of Fact and Conclusions of Law, the undersigned makes the following:

FINAL DECISION

Because the Office of Administrative Hearings does not have subject matter jurisdiction over this case, the Respondent's Motion to Dismiss is hereby **GRANTED** and this matter is hereby **DISMISSED**. This is a final agency decision pursuant to G.S. 150B-36(c)(1).

NOTICE

This final decision is subject to judicial review in the Superior Court Division of the North Carolina General Court of Justice in accordance with the provisions of G.S. Chapter 150B, Article 4, which require that an appeal be filed in the

superior court within thirty (30) days following service upon the person of a written copy of the final decision. G.S. 150B-46 describes the contents of the Petition and requires service of the Petition on all parties. The Petition must be filed either in Wake County Superior Court or in the superior court of the county where the person resides. G.S. 150B-45.

This the 29th day of September, 1995.

Meg Scott Phipps
Administrative Law Judge

The North Carolina Administrative Code (NCAC) has four major subdivisions of rules. Two of these, titles and chapters, are mandatory. The major subdivision of the NCAC is the title. Each major department in the North Carolina executive branch of government has been assigned a title number. Titles are further broken down into chapters which shall be numerical in order. The other two, subchapters and sections are optional subdivisions to be used by agencies when appropriate.

TITLE/MAJOR DIVISIONS OF THE NORTH CAROLINA ADMINISTRATIVE CODE

TITLE	DEPARTMENT	LICENSING BOARDS	CHAPTER
1	Administration	Acupuncture	1
2	Agriculture	Architecture	2
3	Auditor	Auctioneers	4
4	Commerce	Barber Examiners	6
5	Correction	Certified Public Accountant Examiners	8
6	Council of State	Chiropractic Examiners	10
7	Cultural Resources	General Contractors	12
8	Elections	Cosmetic Art Examiners	14
9	Governor	Dental Examiners	16
10	Human Resources	Dietetics/Nutrition	17
11	Insurance	Electrical Contractors	18
12	Justice	Electrolysis	19
13	Labor	Foresters	20
14A	Crime Control & Public Safety	Geologists	21
15A	Environment, Health, and Natural Resources	Hearing Aid Dealers and Fitters	22
16	Public Education	Landscape Architects	26
17	Revenue	Landscape Contractors	28
18	Secretary of State	Marital and Family Therapy	31
19A	Transportation	Medical Examiners	32
20	Treasurer	Midwifery Joint Committee	33
*21	Occupational Licensing Boards	Mortuary Science	34
22	Administrative Procedures	Nursing	36
23	Community Colleges	Nursing Home Administrators	37
24	Independent Agencies	Occupational Therapists	38
25	State Personnel	Opticians	40
26	Administrative Hearings	Optometry	42
27	NC State Bar	Osteopathic Examination & Reg. (Repealed)	44
		Pastoral Counselors, Fee-Based Practicing	45
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		Physical Therapy Examiners	48
		Plumbing, Heating & Fire Sprinkler Contractors	50
		Podiatry Examiners	52
		Professional Counselors	53
		Practicing Psychologists	54
		Professional Engineers & Land Surveyors	56
		Real Estate Appraisal Board	57
		Real Estate Commission	58
		Refrigeration Examiners	60
		Sanitarian Examiners	62
		Social Work Certification	63
		Speech & Language Pathologists & Audiologists	64
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		Veterinary Medical Board	66

Note: Title 21 contains the chapters of the various occupational licensing boards.

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.0401 - .0402	10:02 NCR 150	07/01/95			08/01/95	
.0501	10:07 NCR 585	10/01/95				
.0701	10:07 NCR 585	10/01/95				
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2 NCAC 34 .0904	10:04 NCR 228	08/01/95			N/A	Renoticed in 10:7
.0904	10:07 NCR 430	11/01/95				
ARCHITECTURE						
21 NCAC 02 .0208	10:12 NCR 985	12/01/95				
02 .0301 - .0302	10:10 NCR 829	07/01/96				
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4 NCAC 06C .0203	10:05 NCR 300	09/01/95				
CORRECTION						
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			State	Local		
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	.0211	10:01 NCR 13				Correction to Notice
	.0301	10:01 NCR 13				Correction to Notice
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.2201 - .2202	10:03 NCR 204	12/01/95				
.2203	10:03 NCR 204	12/01/95	x			
.2204 - .2205	10:03 NCR 204	12/01/95				
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10B .0115	10:06 NCR 338	10/01/95				
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.0214	10:01 NCR 26	07/01/95			07/01/95	
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.0407	10:06 NCR 338	12/01/95				
10D .0002 - .0003	10:01 NCR 26	07/01/95			07/01/95	
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10F .0313	10:06 NCR 338	10/01/95			10/01/95	
.0317	10:01 NCR 26	07/01/95			07/01/95	
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10K .0003	10:13 NCR 1159	02/01/96				
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	10:03 NCR 195	04/15/95				
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.0019	10:13 NCR 1160	01/01/96				
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.0103	10:06 NCR 350	10/01/95			10/01/95	
.0503	10:06 NCR 350	10/01/95			10/01/95	
.0802 - .0829	10:06 NCR 350	10/01/95			10/01/95	
.1627	10:06 NCR 350	10/01/95			N/A	Agency Did Not Adopt
16A .1001	10:07 NCR 582	01/01/96	x			
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18A .1801 - .1814	10:13 NCR 1160	01/01/96				
.1818	10:13 NCR 1160	01/01/96				
.2508	10:06 NCR 350	01/01/96			01/01/96	
.2509	10:06 NCR 350	01/01/96				RRC Obj/Rule Withdrawn
.2510 - .2511	10:06 NCR 350	01/01/96			01/01/96	
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.2526	10:06 NCR 350	01/01/96			01/01/96	
.2528 - .2535	10:06 NCR 350	01/01/96			01/01/96	
.2537	10:06 NCR 350	01/01/96			01/01/96	
.2540 - .2542	10:06 NCR 350	01/01/96			01/01/96	
.2543	10:06 NCR 350	01/01/96			N/A	Agency Did Not Adopt
.2601 - .2602	10:13 NCR 1160	01/01/96				
.2618	10:13 NCR 1160	01/01/96				
.2624	10:13 NCR 1160	01/01/96				
.2632	10:13 NCR 1160	01/01/96				
.2635 - .2636	10:13 NCR 1160	01/01/96				
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.0502	10:06 NCR 350	10/01/95			10/01/95	
19C .0206	10:05 NCR 305	10/01/95	x			
19H .0702	10:07 NCR 582	10/01/95	x		N/A	Withdrawn by Agency
20D .0233 - .0234	10:13 NCR 1160	01/01/96				
.0236	10:13 NCR 1160	01/01/96				
.0241 - .0243	10:13 NCR 1160	01/01/96				
.0247 - .0252	10:13 NCR 1160	01/01/96				
21F .0801 - .0802	10:13 NCR 1160	01/01/96				
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24A .0102	10:13 NCR 1160	01/01/96				

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.1401	10:08 NCR 641	11/01/95				
.1401 - .1403	10:14 NCR 1238	02/01/96				
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.2101 - .2110	10:02 NCR 58	09/01/95				
.2201 - .2212	10:02 NCR 58	09/01/95				
.2301 - .2308	10:02 NCR 58	09/01/95				
.2401 - .2402	10:02 NCR 58	09/01/95				
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.2601 - .2607	10:02 NCR 58	09/01/95				
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.3201 - .3202	10:02 NCR 58	09/01/95				
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03L .0901 - .0907	10:08 NCR 641	02/01/96				
.1001 - .1007	10:08 NCR 641	02/01/96				
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	.3306	10:14 NCR 1243			01/01/96	
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	.3502 - .3503	10:14 NCR 1243			01/01/96	
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	.0505 - .0509	10:07 NCR 430			05/01/96	
14K	.0101 - .0103	10:07 NCR 430			05/01/96	
	.0201 - .0219	10:07 NCR 430			05/01/96	
	.0301 - .0310	10:07 NCR 430			05/01/96	
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	.0350 - .0365	10:07 NCR 430			05/01/96	
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14L	.0101 - .0106	10:07 NCR 430			05/01/96	
	.0201 - .0203	10:07 NCR 430			05/01/96	
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	.0401 - .0407	10:07 NCR 430			05/01/96	
	.0601 - .0606	10:07 NCR 430			05/01/96	
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	.0501 - .0505	10:07 NCR 430			05/01/96	
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14V	.0101 - .0104	10:07 NCR 430			05/01/96	Agency Did Not Adopt
	.0101 - .0104	10:13 NCR 1085			05/01/96	
	.0201 - .0208	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.0301 - .0304	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.0401 - .0405	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.0501 - .0505	10:07 NCR 430			05/01/96	Agency Did Not Adopt
	.0501 - .0505	10:13 NCR 1085			05/01/96	
	.0601 - .0604	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.0701 - .0712	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.0801 - .0805	10:07 NCR 430			05/01/96	Agency Did Not Adopt
	.0801 - .0805	10:13 NCR 1085			05/01/96	
	.1101 - .1103	10:07 NCR 430			05/01/96	Agency Did Not Adopt
	.1101 - .1103	10:13 NCR 1085			05/01/96	
	.1201 - .1203	10:07 NCR 430			05/01/96	Agency Did Not Adopt
	.1201 - .1203	10:13 NCR 1085			05/01/96	
	.1301 - .1303	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.1401 - .1403	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.1501 - .1504	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.2101 - .2104	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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	.2301 - .2306	10:07 NCR 430			05/01/96	Agency Did Not Adopt
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.3301 - .3303	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.3301 - .3303	10:13 NCR 1085	05/01/96				
.3401 - .3403	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.3401 - .3403	10:13 NCR 1085	05/01/96				
.3501 - .3503	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.3501 - .3503	10:13 NCR 1085	05/01/96				
.3601 - .3604	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.3601 - .3604	10:13 NCR 1085	05/01/96				
.3701 - .3703	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.3701 - .3703	10:13 NCR 1085	05/01/96				
.3801 - .3803	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.3801 - .3803	10:13 NCR 1085	05/01/96				
.3901 - .3903	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.3901 - .3903	10:13 NCR 1085	05/01/96				
.4001 - .4003	10:07 NCR 430	05/01/96				Agency Did Not Adopt
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.4101 - .4104	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.4101 - .4104	10:13 NCR 1085	05/01/96				
.4201 - .4203	10:13 NCR 1085	05/01/96				
.5001 - .5002	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5001 - .5003	10:13 NCR 1085	05/01/96				
.5101 - .5104	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5101 - .5104	10:13 NCR 1085	05/01/96				
.5201 - .5204	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5201 - .5204	10:13 NCR 1085	05/01/96				
.5301 - .5303	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5301 - .5303	10:13 NCR 1085	05/01/96				
.5401 - .5403	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5401 - .5403	10:13 NCR 1085	05/01/96				
.5501 - .5503	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5501 - .5503	10:13 NCR 1085	05/01/96				
.5601 - .5603	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5601 - .5603	10:13 NCR 1085	05/01/96				
.5701 - .5703	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5701 - .5703	10:13 NCR 1085	05/01/96				
.5801 - .5804	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5801 - .5804	10:13 NCR 1085	05/01/96				
.5901 - .5903	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.5901 - .5903	10:13 NCR 1085	05/01/96				
.6001 - .6003	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6001 - .6003	10:13 NCR 1085	05/01/96				
.6101 - .6103	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6101 - .6103	10:13 NCR 1085	05/01/96				
.6201 - .6202	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6201 - .6202	10:13 NCR 1085	05/01/96				
.6301 - .6303	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6301 - .6303	10:13 NCR 1085	05/01/96				
.6401 - .6403	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6401 - .6403	10:13 NCR 1085	05/01/96				
.6501 - .6503	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6501 - .6503	10:13 NCR 1085	05/01/96				
.6601 - .6603	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6601 - .6603	10:13 NCR 1085	05/01/96				
.6701 - .6702	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6701 - .6702	10:13 NCR 1085	05/01/96				
.6801 - .6802	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6801 - .6802	10:13 NCR 1085	05/01/96				
.6901 - .6903	10:07 NCR 430	05/01/96				Agency Did Not Adopt
.6901 - .6903	10:13 NCR 1085	05/01/96				
15A .0115 - .0127	10:13 NCR 1085	01/01/96	x			
.0205 - .0228	10:13 NCR 1085	01/01/96	x			

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.0130	10:07 NCR 430	05/01/96				
.0132 - .0133	10:07 NCR 430	05/01/96				
.0135 - .0136	10:07 NCR 430	05/01/96				
18D .0209	10:14 NCR 1311	01/01/96				
18F .0115 - .0117	10:14 NCR 1311	01/01/96				
18I .0114 - .0120	10:07 NCR 430	05/01/96				
18J .0110 - .0119	10:07 NCR 430	05/01/96				
.0212 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0311	10:07 NCR 430	05/01/96				
.0507 - .0511	10:08 NCR 656	05/01/96				
.0601 - .0604	10:07 NCR 430	05/01/96				
.0701 - .0715	10:07 NCR 430	05/01/96				
.0801 - .0805	10:07 NCR 430	05/01/96				
.0803	10:02 NCR 118	07/01/95			07/01/95	
18K .0109 - .0116	10:07 NCR 430	05/01/96				
.0262 - .0263	10:08 NCR 656	05/01/96				
18L .0107 - .0108	10:07 NCR 430	05/01/96				
.0223 - .0224	10:07 NCR 430	05/01/96				
.0331 - .0336	10:07 NCR 430	05/01/96				
.0338 - .0339	10:07 NCR 430	05/01/96				
.0428 - .0434	10:07 NCR 430	05/01/96				
.0504	10:07 NCR 430	05/01/96				
.0511	10:07 NCR 430	05/01/96				
.0513	10:07 NCR 430	05/01/96				
.0601 - .0607	10:08 NCR 656	05/01/96				
.0701 - .0705	10:07 NCR 430	05/01/96				
.0707	10:07 NCR 430	05/01/96				
.0801	10:07 NCR 430	05/01/96				
.0803 - .0809	10:07 NCR 430	05/01/96				
.0901 - .0904	10:07 NCR 430	05/01/96				
.1001 - .1006	10:07 NCR 430	05/01/96				
.1101 - .1103	10:07 NCR 430	05/01/96				
.1105 - .1107	10:07 NCR 430	05/01/96				
.1201	10:07 NCR 430	05/01/96				
.1203 - .1206	10:07 NCR 430	05/01/96				
.1301 - .1309	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1501 - .1525	10:07 NCR 430	05/01/96				
18M .0107 - .0110	10:07 NCR 430	05/01/96				
.0206 - .0213	10:07 NCR 430	05/01/96				
.0304 - .0307	10:07 NCR 430	05/01/96				
.0406 - .0409	10:07 NCR 430	05/01/96				
.0505 - .0506	10:07 NCR 430	05/01/96				
.0607 - .0608	10:07 NCR 430	05/01/96				
.0701	10:07 NCR 430	05/01/96				
.0703 - .0706	10:07 NCR 430	05/01/96				
.0708 - .0714	10:07 NCR 430	05/01/96				
.0801 - .0803	10:07 NCR 430	05/01/96				
.0817 - .0819	10:07 NCR 430	05/01/96				
.0824 - .0838	10:07 NCR 430	05/01/96				
.0901 - .0908	10:07 NCR 430	05/01/96				
.1001 - .1009	10:07 NCR 430	05/01/96				
.1101 - .1106	10:07 NCR 430	05/01/96				
.1203 - .1204	10:07 NCR 430	05/01/96				
.1302 - .1305	10:07 NCR 430	05/01/96				
.1401 - .1403	10:07 NCR 430	05/01/96				
.1405 - .1410	10:07 NCR 430	05/01/96				
18N .0105 - .0110	10:07 NCR 430	05/01/96				
.0204 - .0212	10:07 NCR 430	05/01/96				
.0305 - .0306	10:07 NCR 430	05/01/96				
.0601 - .0605	10:08 NCR 656	05/01/96				
.0701 - .0709	10:08 NCR 656	05/01/96				

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18P .0901 - .0903	10:07 NCR 430	05/01/96				
.1001 - .1004	10:07 NCR 430	05/01/96				
18Q .0284	10:07 NCR 430	05/01/96				
.0286 - .0287	10:07 NCR 430	05/01/96				
.0520 - .0521	10:07 NCR 430	05/01/96				
.0538 - .0552	10:07 NCR 430	05/01/96				
19G .0501 - .0502	10:14 NCR 1312	01/01/96				
.0603	10:14 NCR 1312	01/01/96				
.0606 - .0612	10:14 NCR 1312	01/01/96				
.0803	10:14 NCR 1312	01/01/96				
.0806	10:14 NCR 1312	01/01/96				
.0817	10:14 NCR 1312	01/01/96				
.0823	10:14 NCR 1312	01/01/96				
26B .0110	10:08 NCR 660	10/01/95			10/01/95	
.0124	10:02 NCR 118	07/01/95	x		07/01/95	
26G .0703 - .0705	10:12 NCR 982	12/01/95				
26H .0212 - .0213	10:13 NCR 1153	01/01/96	x			
.0213	10:02 NCR 118	07/01/95			07/01/95	
.0213	10:14 NCR 1317	01/01/96	x			
.0302	10:04 NCR 228	08/01/95	x		08/01/95	
.0304 - .0305	10:04 NCR 228	08/01/95	x		08/01/95	
.0308 - .0309	10:04 NCR 228	08/01/95	x		08/01/95	
.0508	10:12 NCR 982	12/01/95				
26I .0101 - .0107	10:10 NCR 826	11/01/95				
39D .0302 - .0303	10:09 NCR 722	11/01/95				
41F .0706	10:03 NCR 196	08/01/95			08/01/95	
.0812	10:03 NCR 196	08/01/95			08/01/95	
42B .1209	10:13 NCR 1158	01/01/96				
42C .2010	10:13 NCR 1158	01/01/96				
42D .1409	10:13 NCR 1158	01/01/96				
42H .0911	10:09 NCR 722	12/01/95				
42W .0001 - .0002	10:10 NCR 828	11/01/95				
50B .0313	10:14 NCR 1321	01/01/96				
INSURANCE						
11 NCAC 06A .0812	10:04 NCR 246	08/01/95			08/01/95	
16 .0704	10:11 NCR 900	12/01/95				
JUSTICE						
12 NCAC 04E .0104	10:07 NCR 573	10/01/95			10/01/95	
07D .0201	10:07 NCR 575	10/01/95				
.0204	10:11 NCR 900	12/01/95				
.0301	10:07 NCR 575	10/01/95				
.0401	10:07 NCR 575	10/01/95				
.0701	10:07 NCR 575	10/01/95				
.0706	10:07 NCR 575	10/01/95				
.0801	10:07 NCR 575	10/01/95				
.0806	10:07 NCR 575	10/01/95				
.0902	10:07 NCR 575	10/01/95				
.0904	10:07 NCR 575	10/01/95				
09A .0204	10:02 NCR 122	08/01/95			08/01/95	
09B .0113	10:02 NCR 122	08/01/95			08/01/95	
.0201 - .0202	10:02 NCR 122	08/01/95			01/01/96	
.0205	10:02 NCR 122	08/01/95				
.0206	10:02 NCR 122	08/01/95			08/01/95	
.0210	10:02 NCR 122	08/01/95			08/01/95	
.0212 - .0214	10:02 NCR 122	08/01/95			08/01/95	
.0226 - .0228	10:02 NCR 122	08/01/95			08/01/95	
.0232 - .0233	10:02 NCR 122	08/01/95			08/01/95	
09C .0401	10:02 NCR 122	08/01/95			08/01/95	
.0601	10:02 NCR 122	08/01/95			08/01/95	
09D .0102	10:02 NCR 122	08/01/95			08/01/95	

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			State	Local		
10B .0104 - .0106	10:02 NCR 122	08/01/95			08/01/95	
.0102 - .0103	10:09 NCR 723	01/01/96				
.0105	10:09 NCR 723	01/01/96				
.0204	10:09 NCR 723	01/01/96				
.0301	10:09 NCR 723	01/01/96				
.0304	10:09 NCR 723	01/01/96				
.0307	10:09 NCR 723	01/01/96				
.0401 - .0403	10:09 NCR 723	01/01/96				
.0405	10:09 NCR 723	01/01/96				
.0407 - .0409	10:09 NCR 723	01/01/96				
.0502 - .0503	10:09 NCR 723	01/01/96				
.0505	10:09 NCR 723	01/01/96				
.0601 - .0607	10:09 NCR 723	01/01/96				
.0702 - .0706	10:09 NCR 723	01/01/96				
.0801 - .0803	10:09 NCR 723	01/01/96				
.0901	10:09 NCR 723	01/01/96				
.0903 - .0906	10:09 NCR 723	01/01/96				
.0908 - .0912	10:09 NCR 723	01/01/96				
.1004 - .1005	10:09 NCR 723	01/01/96				
.1201 - .1205	10:09 NCR 723	01/01/96				
11 .0210	10:05 NCR 301	09/01/95			10/01/95	
LABOR						
13 NCAC	10:01 NCR 10	01/01/96				Notice on Subject Matter
	10:01 NCR 12	01/01/96				Notice on Subject Matter
	10:02 NCR 149	10/01/95				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	01/01/96				Notice on Subject Matter
	10:02 NCR 149	02/01/96				Notice on Subject Matter
	10:03 NCR 196	01/01/96				Notice on Subject Matter
	10:03 NCR 197	01/01/96				Notice on Subject Matter
12 .0101	10:02 NCR 142	08/01/95				Notice on Subject Matter
.0303 - .0315	10:02 NCR 142	08/01/95				
.0501 - .0502	10:02 NCR 142	08/01/95				
.0803 - .0808	10:02 NCR 142	08/01/95				
18 .0101 - .0110	10:14 NCR 1323	01/01/96				
LIST OF RULES CODIFIED						
	10:02 NCR 167					Rules Filed 03/95
	10:04 NCR 272					Rules Filed 04/95
	10:06 NCR 392					Rules Filed 05/95
	10:09 NCR 783					Rules Filed 06/95
	10:10 NCR 845					Rules Filed 07/95
	10:12 NCR 1017					Rules Filed 08/95
MEDICAL EXAMINERS						
21 NCAC 32B .0901 - .0902	10:10 NCR 831	11/01/95				
32F .0003	10:10 NCR 831	11/01/95				
32H .0102	10:02 NCR 151	07/01/96			07/01/96	
.0201	10:02 NCR 151	07/01/96			07/01/96	
.0203	10:02 NCR 151	07/01/96				
.0408	10:02 NCR 151	07/01/96			07/01/96	
.0506	10:02 NCR 151	07/01/96			07/01/96	
.0601	10:02 NCR 151	07/01/95			09/01/95	
.0602	10:02 NCR 151	07/01/96			07/01/96	
.0801	10:02 NCR 151	07/01/96			07/01/96	
.1001	10:02 NCR 151	07/01/96			07/01/96	
32I .0003 - .0004	10:02 NCR 151	07/01/95			09/01/95	
32M .0001 - .0002	10:10 NCR 831	11/01/95				
MORTUARY SCIENCE						
21 NCAC 34B .0401	10:13 NCR 1182	01/01/96				
34D .0202	10:13 NCR 1182	01/01/96				

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.0301	10:13 NCR 1182	01/01/96				
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21 NCAC 36 .0109	10:11 NCR 908	01/01/96				
.0202 - .0203	10:11 NCR 908	01/01/96				
.0209	10:11 NCR 908	01/01/96				
.0211	10:11 NCR 908	01/01/96				
.0216 - .0219	10:11 NCR 908	01/01/96				
.0221	10:11 NCR 908	01/01/96				
.0225	10:11 NCR 908	01/01/96				
.0227	10:11 NCR 908	01/01/96				
.0318	10:11 NCR 908	01/01/96				
.0320	10:11 NCR 908	01/01/96				
.0322	10:11 NCR 908	01/01/96				
.0401 - .0405	10:10 NCR 839	12/01/95				
NURSING HOME ADMINISTRATORS						
21 NCAC 37 .0101	10:04 NCR 262	08/01/95			08/01/95	
.0302	10:03 NCR 206	08/01/95			N/A	Agency withdrew Rule
.0404	10:03 NCR 206	08/01/95			N/A	Agency withdrew Rule
.0502	10:03 NCR 206	08/01/95			08/01/95	
.0603	10:03 NCR 206	08/01/95			08/01/95	
.0904	10:04 NCR 262	08/01/95			N/A	Agency withdrew Rule
.0912	10:03 NCR 206	08/01/95			08/01/95	
.0914	10:03 NCR 206	08/01/95			N/A	Agency withdrew Rule
PHYSICAL THERAPY EXAMINERS						
21 NCAC 48C .0103	10:08 NCR 671	10/01/95			N/A	Agency withdrew Rule
48D .0006	10:08 NCR 671	10/01/95			10/01/95	
.0008	10:08 NCR 671	10/01/95			10/01/95	
.0011	10:08 NCR 671	10/01/95			10/01/95	
48E .0110	10:08 NCR 671	10/01/95			10/01/95	
48F .0002	10:08 NCR 671	10/01/95			10/01/95	
48G .0501 - .0516	10:08 NCR 671	10/01/95			10/01/95	
.0601	10:08 NCR 671	10/01/95			10/01/95	
48H .0104	10:08 NCR 671	10/01/95			10/01/95	
.0701 - .0704	10:08 NCR 671	10/01/95			10/01/95	
PLUMBING, HEATING & FIRE SPRINKLER CONTRACTORS						
21 NCAC 50 .0402	10:01 NCR 39	09/01/95			09/01/95	
.0505	10:01 NCR 39	09/01/95			N/A	Agency Did Not Adopt
PROFESSIONAL COUNSELORS						
21 NCAC 53 .0204 - .0211	10:01 NCR 40	07/01/95			07/01/95	
.0301	10:01 NCR 40	07/01/95			07/01/95	
.0305 - .0309	10:01 NCR 40	07/01/95			07/01/95	
.0310	10:01 NCR 40	07/01/95			07/01/95	
.0403 - .0405	10:01 NCR 40	07/01/95			07/01/95	
.0601 - .0604	10:01 NCR 40	07/01/95			07/01/95	
PROFESSIONAL ENGINEERS AND LAND SURVEYORS						
21 NCAC 56 .0802	10:11 NCR 934	12/01/95				
.0804	10:11 NCR 934	12/01/95				
.0902	10:11 NCR 934	12/01/95				
.1103	10:11 NCR 934	12/01/95				
.1301	10:11 NCR 934	12/01/95				
.1602	10:11 NCR 934	12/01/95				
.1604	10:11 NCR 934	12/01/95				
.1608	10:11 NCR 934	12/01/95				
.1707	10:11 NCR 934	12/01/95				
.1712 - .1713	10:11 NCR 934	12/01/95				

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21 NCAC 54 .1701	10:11 NCR 929	12/01/95				
.1707	10:11 NCR 929	12/01/95				
.2704 - .2706	10:11 NCR 929	12/01/95				
PUBLIC EDUCATION						
16 NCAC 06D .0106	10:07 NCR 584	11/01/95				
REAL ESTATE COMMISSION						
21 NCAC 58A .0110	10:02 NCR 157	07/01/95			07/01/95	
.0403	10:04 NCR 263	08/01/95			08/01/95	
.0503	10:04 NCR 263	08/01/95			08/01/95	
.0504 - .0506	10:02 NCR 157	07/01/95			07/01/95	
.0505	10:04 NCR 263	08/01/95			08/01/95	
.1703	10:02 NCR 157	07/01/95			07/01/95	
.1707 - .1708	10:02 NCR 157	07/01/95			07/01/95	
.1710 - .1711	10:02 NCR 157	07/01/95			07/01/95	
58E .0103	10:02 NCR 157	07/01/95			07/01/95	
.0203 - .0204	10:02 NCR 157	07/01/95			07/01/95	
.0303 - .0305	10:02 NCR 157	07/01/95			07/01/95	
.0406 - .0407	10:02 NCR 157	07/01/95			07/01/95	
.0506	10:02 NCR 157	07/01/95			07/01/95	
.0515	10:02 NCR 157	07/01/95			07/01/95	
REFRIGERATION EXAMINERS						
21 NCAC 60 .0102	10:04 NCR 264	08/01/95			08/01/95	
.0105	10:09 NCR 781	11/01/95				
.0204	10:04 NCR 264	08/01/95			08/01/95	
.0314	10:04 NCR 264	08/01/95			08/01/95	
.1102	10:04 NCR 264	08/01/95			08/01/95	
.1103	10:09 NCR 781	11/01/95				
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Tax Review Board	10:01 NCR 03					
Tax Review Board	10:07 NCR 428					
Tax Review Board	10:09 NCR 716					
Tax Review Board	10:11 NCR 890					
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18 NCAC 06 .1205 - .1206	10:05 NCR 306	09/01/95				
.1208	10:05 NCR 306	09/01/95				
.1302 - .1305	10:05 NCR 306	09/01/95				
.1313	10:05 NCR 306	09/01/95				
.1402	10:11 NCR 906	12/01/95				
SOCIAL WORK, BOARD OF						
21 NCAC 63 .0306	10:13 NCR 1185	01/01/96				
STATE PERSONNEL						
25 NCAC 01C .0207	10:04 NCR 264	08/01/95				
.0402 - .0408	10:04 NCR 264	08/01/95				
01D .0201	10:04 NCR 264	08/01/95				
.0205	10:04 NCR 264	08/01/95				
.0207	10:04 NCR 264	08/01/95				
.0211	10:04 NCR 264	08/01/95				
.0401	10:12 NCR 986	12/01/95				
.0406	10:12 NCR 986	12/01/95				
.0504	10:12 NCR 986	12/01/95				
.0509	10:07 NCR 588	10/01/95			10/01/95	
.0510 - .0511	10:12 NCR 986	12/01/95				
.0515	10:12 NCR 986	12/01/95				
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.1001	10:04 NCR 264	08/01/95				
.1001	10:12 NCR 986	12/01/95				
.1005	10:12 NCR 986	12/01/95				
.1009	10:04 NCR 264	08/01/95				
.1009 - .1010	10:12 NCR 986	12/01/95				
.1201	10:04 NCR 264	08/01/95				
.1204	10:04 NCR 264	08/01/95				
.1401	10:04 NCR 264	08/01/95				
.1801 - .1802	10:04 NCR 264	08/01/95				
.1928	10:12 NCR 986	12/01/95				
.2001	10:04 NCR 264	08/01/95			08/08/95	
.2601 - .2604	10:12 NCR 986	12/01/95				
01E .0304 - .0305	10:12 NCR 986	12/01/95				
.0804	10:04 NCR 264	08/01/95				
.1001 - .1002	10:12 NCR 986	12/01/95				
.1110	10:12 NCR 986	12/01/95				
.1402 - .1411	10:07 NCR 588	10/01/95			10/01/95	
01H .0628	10:12 NCR 986	12/01/95				
01I .2301 - .2310	10:12 NCR 986	12/01/95				
01J .0401 - .0413	10:12 NCR 986	12/01/95				
.0501 - .0511	10:12 NCR 986	12/01/95				
.0604 - .0606	10:07 NCR 588	10/01/95			10/01/95	
.0608	10:07 NCR 588	10/01/95			10/01/95	
.0610 - .0615	10:07 NCR 588	10/01/95			10/01/95	
.0801 - .0809	10:12 NCR 986	12/01/95				
01K .0312	10:04 NCR 264	08/01/95				
.0318	10:12 NCR 986	12/01/95				
.0701 - .0705	10:12 NCR 986	12/01/95				
.0707 - .0708	10:12 NCR 986	12/01/95				
01L .0101 - .0106	10:12 NCR 986	12/01/95				

SUBSTANCE ABUSE PROFESSIONALS CERTIFICATION BOARD

21 NCAC 68 .0501 - .0511	10:14 NCR 1382	02/01/96
.0601 - .0610	10:14 NCR 1382	02/01/96

TRANSPORTATION

19A NCAC 02D .0415	10:12 NCR 984	12/31/95
.0801	10:04 NCR 254	09/01/95
04A .0004	10:10 NCR 829	12/01/95

BARCLAYS OFFICIAL NORTH CAROLINA ADMINISTRATIVE CODE - 1995

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Title 1 - Dept. of Administration - Full Title	201 00 00	\$63.00	\$90.00
Division of Purchase & Contract	201 10 05	\$21.00	\$30.00
Federal Block Grant Funds	201 10 33	\$17.50	\$25.00
Title 2 - Dept. of Agriculture - Full Title	202 00 00	\$98.00	\$140.00
Food & Drug Protection Division	202 15 09	\$28.00	\$40.00
Structural Pest Control Committee	202 15 34	\$21.00	\$30.00
Agricultural Markets	202 15 43	\$21.00	\$30.00
Plant Industry	202 15 48	\$21.00	\$30.00
Animal Industry	202 15 52	\$21.00	\$30.00
Title 3 - Dept. of State Auditor - Full Title	203 00 00	\$7.00	\$10.00
Title 4 - Dept. of Commerce - Full Title	204 00 00	\$87.50	\$125.00
Alcoholic Beverage Control Commission	204 15 02	\$12.00	\$40.00
Banking Commission	204 15 03	\$24.50	\$35.00
Credit Union Division	204 15 06	\$14.00	\$20.00
Savings & Loan Division	204 15 09	\$14.00	\$20.00
Industrial Commission/Workers Compensation	204 15 10	\$14.00	\$20.00
Savings Institutions Division	204 15 16	\$24.50	\$35.00
Title 5 - Dept. of Corrections - Full Title	205 00 00	\$56.00	\$80.00
Division of Prisons	205 15 02	\$24.50	\$35.00
Title 6 - Council of State - Full Title	206 00 00	\$21.00	\$30.00
Title 7 - Dept. of Cultural Resources - Full Title	207 00 00	\$21.00	\$30.00
Title 8 - State Board of Elections - Full Title	208 00 00	\$7.00	\$10.00
Title 9 - Offices of the Governor & Lt. Governor - Full Title	209 00 00	\$31.50	\$45.00
Title 10 - Dept. of Human Resources - Full Title	210 00 00	\$346.50	\$495.00
Licensing of Health Facilities	210 20 10	\$45.50	\$65.00
Datation Facilities	210 20 20	\$31.50	\$45.00
Mental Health & Rehabilitation Services	210 20 30	\$77.00	\$110.00
Social Services	210 20 40	\$119.00	\$170.00
Children Services/Day Care	210 20 41	\$31.50	\$45.00
Services for the Aging	210 20 42	\$31.50	\$45.00
Services for the Blind	210 20 43	\$28.00	\$40.00
Services for the Deaf & Hard of Hearing	210 20 44	\$17.50	\$25.00
Employment Opportunities	210 20 45	\$35.00	\$50.00
Title 11 - Dept. of Insurance - Full Title	211 00 00	\$63.00	\$90.00
Insurance	211 10 01	\$56.00	\$80.00
Consumer Services	211 10 04	\$24.50	\$35.00
Fire & Rescue Services	211 10 05	\$17.50	\$25.00
Agent Services	211 10 06	\$28.00	\$40.00
Engineering & Building Codes	211 10 08	\$21.00	\$30.00
Title 12 - Dept. of Justice - Full Title	212 00 00	\$63.00	\$90.00
Private Protective Services	212 10 07	\$21.00	\$30.00
Police & Sheriff's Education & Training Standards	212 10 09	\$31.50	\$45.00
NC Alarm Systems Licensing Board	212 10 11	\$17.50	\$25.00
Title 13 - Dept. of Labor - Full Title	213 00 00	\$77.00	\$110.00
Mine & Quarry Safety	213 15 06	\$14.00	\$20.00
General Safety/OSHA	213 20 00	\$31.50	\$45.00
Wage & Hour Rules	213 15 12	\$14.00	\$20.00
Boiler & Pressure Vessel Safety	213 15 13	\$14.00	\$20.00
Apprenticeship & Training	213 15 14	\$14.00	\$20.00
Elevator & Amusement Device Safety	213 15 15	\$14.00	\$20.00
Title 14A - Dept. of Crime Control & Public Safety - Full Title	214 00 00	\$31.50	\$45.00
Alcohol Law Enforcement	214 00 08	\$17.50	\$25.00
Victims Compensation Fund	214 00 11	\$14.00	\$20.00
Title 15A - Dept. of Environ., Health, & Nat. Resources - Full Title	215 00 00	\$276.50	\$395.00
Environmental Management	215 15 00	\$115.50	\$165.00
Air Quality	215 15 10	\$49.00	\$70.00
Water Quality	215 15 20	\$49.00	\$70.00
Land & Waste Management	215 15 30	\$58.00	\$80.00
Solid Waste Management	215 15 31	\$35.00	\$50.00
Underground Storage Tanks	215 15 32	\$17.50	\$25.00

DESCRIPTION	CODE	ONE-TIME PURCHASE PRICE	ANNUAL SUBSCRIPTION PRICE
Coastal Management	215 15 40	\$31.50	\$45.00
Environmental Health	215 25 00	\$105.00	\$150.00
Radiation/Nuclear Waste	215 25 10	\$42.00	\$60.00
Sanitation	215 25 20	\$35.00	\$50.00
Public Health	215 25 30	\$59.50	\$85.00
Intoxilizer & Breathalyzer	215 25 31	\$17.50	\$25.00
Title 16 - Dept. of Public Instruction - Full Title	216 00 00	\$21.00	\$30.00
Elementary & Secondary Education	218 10 05	\$21.00	\$30.00
Title 17 - Dept. of Revenue - Full Title	217 00 00	\$91.00	\$130.00
Taxes on Individuals	217 15 10	\$31.50	\$45.00
Taxes on Business	217 15 20	\$58.00	\$80.00
Sales & Use Tax Division	217 15 27	\$31.50	\$45.00
Motor Fuels Tax Division	217 15 28	\$21.00	\$30.00
Title 18 - Secretary of State - Full Title	218 00 00	\$21.00	\$30.00
Securities Division	218 10 08	\$21.00	\$30.00
Title 19A - Dept. of Transportation - Full Title	219 00 00	\$63.00	\$90.00
Division of Highways	219 10 02	\$28.00	\$40.00
Division of Motor Vehicles	219 10 03	\$35.00	\$50.00
Title 20 - Dept. of the State Treasurer - Full Title	220 00 00	\$31.50	\$45.00
Title 21 - Occupational Licensing Boards - Full Title	221 00 00	\$143.50	\$205.00
Title 22 - Administrative Procedures Act - Repealed	222 00 00	\$0.00	\$0.00
Title 23 - Dept. of Community Colleges - Full Title	223 00 00	\$7.00	\$10.00
Title 24 - Independent Agencies - Full Title	224 00 00	\$7.00	\$10.00
Title 25 - Office of State Personnel - Full Title	225 00 00	\$42.00	\$60.00
Title 26 - Office of Administrative Hearings - Full Title	226 00 00	\$7.00	\$10.00
Title 27 - North Carolina State Bar - Full Title	227 00 00	\$42.00	\$60.00
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